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Supreme Court of the United States.

OCTOBER TERM, 1964.

No. 515.

HEART OF ATLANTA MOTEL, INC.,

v.

UNITED STATES.

BRIEF OF EDWARD W. BROOKE, ATTORNEY GENERAL OF THE COMMONWEALTH OF MASSACHUSETTS, AS AMICUS CURIAE IN SUPPORT OF THE UNITED STATES.

I. Position of the Amicus Curiae.

By letter to the National Association of Attorneys General dated August 26, 1964, the Clerk of this Court notified all Attorneys General of the instant litigation, and invited them to submit briefs *amicus curiae* on the constitutional issue involved. Massachusetts was the first state in the nation to pass a "public accommodations" statute, Mass. Stat. 1865, c. 277, which, as amended, survives today. G.L. c. 272, §§ 92A, 98. The Massachusetts statute is similar in purpose and design to section 201 of the Civil Rights Act of 1964, the constitutionality of which is challenged in this litigation. It is the opinion of this *amicus curiae* that a holding that section 201 is unconstitutional could

cast a serious cloud on the validity of the similar statutes in Massachusetts and in many other states, and that such a holding would be legally indefensible. It is, accordingly, the obligation and privilege of the *amicus* to respond affirmatively to the invitation. This *amicus* has not received a record of the case at bar. Accordingly he will not comment on the facts or the proceedings therein. To the contrary, he will direct his arguments solely to the question whether section 201, on its face, is unconstitutional. It is the position of this brief that the section is constitutional.

II. The Relevant Statute and Constitutional Provisions.

Section 201 of Public Law 88-342, the Civil Rights Act of 1964, reads in part as follows:

> "SEC. 201. (a) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.
>
> "(b) Each of the following establishments which serves the public is a place of public accommodation within the meaning of this title if its operations affect commerce, or if discrimination or segregation by it is supported by State action:
>
> "(1) Any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;
>
> . . . . . .

"(4) Any establishment (A)(i) which is physically located within the premises of any establishment otherwise covered by this subsection, or (ii) within the premises of which is physically located any such covered establishment, and (B) which holds itself out as serving patrons of such covered establishment.

"(c) The operations of an establishment affect commerce within the meaning of this title if (1) it is one of the establishments described in paragraph (1) of subsection (b) . . . ; and (4) in the case of an establishment described in paragraph (4) of subsection (b), it is physically located within the premises of, or there is physically located within its premises, an establishment the operations of which affect commerce within the meaning of this subsection. For purposes of this section, "commerce" means travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any State, or between any foreign country or any territory or possession and any State or the District of Columbia, or between points in the same State but through any other State or the District of Columbia or a foreign country.

"(d) Discrimination or segregation by an establishment is supported by State action within the meaning of this title if such discrimination or segregation (1) is carried on under color of any law, statute, ordinance, or regulation; or (2) is carried on under color of any custom or usage required or enforced by officials of the State or political subdivision thereof; or (3) is required by action of the State or political subdivision thereof.

"(e) The provisions of this title shall not apply to a private club or other establishment not in fact open

to the public, except to the extent that the facilities of such establishment are made available to the customers or patrons of an establishment within the scope of subsection (b).

The purported bases of jurisdiction are Article I, § 8, cl. 3 (the Commerce Clause), and section 5 of the Fourteenth Amendment to the Constitution. The former provision reads:

> "The Congress shall have Power . . . to regulate Commerce . . . among the several States . . ."

The latter provision reads:

> "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

The relevant provision appears in section 1:

> ". . . nor [shall any State] deny to any person within its jurisdiction the equal protection of the laws."

Section 201 will be tested against the provision of the following Fifth Amendment:

> "No person shall . . . be deprived of life, liberty, or property, without due process of law . . ."

III. The Issues and Summary of Argument.

Congress clearly sought to legislate only pursuant to the authority granted in part by the Commerce Clause and

in part by the Fourteenth Amendment. No such limiting principle appeared in the Civil Rights Act of March 1, 1875, which read, in relevant part:

> "That all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities and privileges of inns, public conveyances on land or water, theatres, and other places of public amusement; subject only to the conditions and limitations established by law; and applicable alike to citizens of every race and color, regardless of any previous condition of servitude." 18 Stat. 335.

This statute was held invalid in the *Civil Rights Cases*, 109 U.S. 3 (1883). The policy it sought to enunciate reached far beyond the power of Congress under the Thirteenth through Fifteenth Amendments. The principal holding of the case—that the Fourteenth Amendment prohibits only "state action"—has been reaffirmed by this Court on each occasion on which it has been called into question, and as recently as in the last Term. *Peterson* v. *Greenville*, 373 U.S. 244 (1963). *Lombard* v. *Louisiana*, 373 U.S. 267 (1963). The *Civil Rights Cases* did not consider the statute before it under the Commerce Clause, "as the sections in question are not conceived in any such view." 109 U.S. at 19.

The question before the Court is whether the effort of Congress to contain its legislation within the prescribed bounds was successful. It is, in this respect, noteworthy that Congress did not merely incorporate the constitutional limitations by reference. Subsections (b)(1) and (c)(1) provide in effect that any place for the lodging of transient guests (with the exceptions

set forth) *ipso facto* falls within the jurisdiction of the Commerce Clause. Similarly in subsection (d) Congress defines "state action" which will permit its exercise of jurisdiction.

The Commerce Clause is a major bulwark of our federal system. It authorizes central policy-making in matters which are not local in nature. That the effects of racial discrimination can be burdensome to the national interest has long been recognized. State laws which impose a burden on commerce are themselves in conflict with the power of Congress and are invalid. In addition, Congress has affirmatively regulated private carriers to insure uniform racial policies in interstate travel since 1887. Congress's conclusions must be sustained if any set of facts can rationally be presumed which will support them. Congress might well have found that the burdens on interstate commerce by discrimination do not cease when the carrier's passenger leaves the terminal; or because the citizen decides to travel by automobile. It might also have found that discrimination enervates the whole community and leads to economic stagnation or isolation.

All of the activities described in subsection (d) of the Act have been held to constitute "state action." In effect, this subsection merely incorporates the Equal Protection Clause, with its judicial gloss, into the statute.

The Act does curtail a prior existing "liberty" to discriminate in the conduct of business. All law does likewise. The particular liberty, however, is irrational and runs counter to national policy. An act does not offend the Fifth Amendment when it is designed to serve a legitimate end and chooses means to do so which are not arbitrary or capricious.

IV. Argument.

1. Not simply trade, but all intercourse which affects the states generally is subject to the scrutiny of Congress under the Commerce Clause.

A simplistic reading of the word "commerce" would limit its meaning to traffic, trade, the flow of commodities and similar business enterprises. Yet such a reading would reflect neither the intention of the draftsmen of the clause nor its century and a half of development by judicial interpretation.

The original resolution at the Constitutional Convention, from which the Commerce Clause emerged, granted the Congress power to legislate in all cases where "The harmony of the United States may be interrupted by the exercise of individual legislation." Madison's Debates (as reported in H.R. Doc. No. 398, 69th Cong., 1st Sess., 1929), 117. This Resolution was unanimously approved. *Id.* at 129-130. A counter-proposal, intended to limit Congressional power to matters more closely related to business, was defeated. *Id.* at 234. The final resolution, containing the language of the original resolution, was sent to the Committee on Detail (*id.* at 390, 465), whence it was reported out substantially in the form of Article I, § 8, cl. 3, of the Constitution, and thereupon passed without debate. *Id.* at 495.

To hold that the clause changed its meaning in the Committee on Detail to one which the Convention itself had previously rejected, and, further, that the Convention then, without debate, approved the change, would attribute to the members of the Committee disingenuousness and guile, and to the Convention members a blind acquiescence which affronts credulity. The only plausible explanation of the drafting changes is that the Committee sought to

reduce to language appropriate for a legal document the philosophy approved by the Convention.

So viewed, the Commerce Clause represents not merely a grant of technical, regulatory powers over interstate business. It represents a major principle of federalism which was arrived at, not casually, but only after great deliberation. Indeed, the clause was considered essential to bind a loose confederacy into a strong union, the very purpose for which the Convention was called. *Id. passim.* The Constitution "was framed upon the theory that the peoples of the several states must sink or swim together, and that in the long run prosperity and salvation are in union and not division." *Baldwin* v. *G. A. F. Seelig, Inc.*, 294 U.S. 511, 523 (1935). See also *United States* v. *South-Eastern Underwriters Association,* 322 U.S. 533 (1944); *The Minnesota Rate Cases,* 230 U.S. 352, 398 (1913).

It is not surprising, therefore, that the most-frequently quoted enunciation of the meaning of the Commerce Clause is that of the great Federalist Chief Justice, Marshall:

> "The subject to be regulated is commerce; and our constitution being . . . one of enumeration, and not of definition, to ascertain the extent of the power, it becomes necessary to settle the meaning of the word. . . . Commerce, undoubtedly, is traffic, but it is something more: it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches . . . It has been truly said that commerce, as the word is used in the constitution, is a unit, every part of which is indicated by the term. . . . The genius and character of the whole government seems to be, that its action is to be applied to all the external concerns of the nation, and to those internal concerns which affect the States generally; but not to those which are completely within

> a particular State, which do not affect other States, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the government." *Gibbons* v. *Ogden*, 9 Wheat. 1, 189-190, 194, 195 (1824).

These principles have so often been reaffirmed as to be, at this point in time, axiomatic.* *E.g., Wickard* v. *Filburn*, 317 U.S. 111, 120-125 (1942); *Houston, East & West Texas Railway Co.* v. *United States*, 234 U.S. 342, 350-351 (1914); *Lottery Case*, 188 U.S. 321, 346-347 (1903). They bear repetition because of the guides to interpretation which follow from them. As a great principle of the division of power between the states and the national government, as well as a constitutional provision, the exposition of the meaning of the Commerce Clause must be broad enough to admit of adaptation to future demands. Myopia has little place in judicial interpretation of any sort, let alone constitutional interpretation. The challenges to the federal government change from generation to generation; the application of these various purposes to a given piece of legislation naturally must be viewed accordingly. The Commerce Clause, like other clauses in the Constitution, must be "interpreted with suppleness of adaptation and flexibility of meaning. The power is as broad as the need that evokes it." *Carter* v. *Carter Coal Co.*, 298 U.S. 238,

*It is no longer necessary to discuss the cases earlier in the century which sought to engraft onto the Constitution theories of "proximate cause" which have long since been discredited, even in the law of torts from which they were borrowed. *E.g., Adkins* v. *Children's Hospital*, 261 U.S. 525 (1923), *overruled* by *West Coast Hotel Co.* v. *Parrish*, 300 U.S. 379 (1937); *Hammer* v. *Dagenhart*, 247 U.S. 251 (1918), overruled by *United States* v. *Darby*, 312 U.S. 100 (1941). This line of cases was aberrant and is now simply a historical curiosity.

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> "The subject to be regulated is commerce; and our constitution being . . . one of enumeration, and not of definition, to ascertain the extent of the power, it becomes necessary to settle the meaning of the word. . . . Commerce, undoubtedly, is traffic, but it is something more: it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches . . . It has been truly said that commerce, as the word is used in the constitution, is a unit, every part of which is indicated by the term. . . . The genius and character of the whole government seems to be, that its action is to be applied to all the external concerns of the nation, and to those internal concerns which affect the States generally; but not to those which are completely within

> a particular State, which do not affect other States, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the government." *Gibbons* v. *Ogden*, 9 Wheat. 1, 189-190, 194, 195 (1824).

These principles have so often been reaffirmed as to be, at this point in time, axiomatic.* *E.g., Wickard* v. *Filburn*, 317 U.S. 111, 120-125 (1942); *Houston, East & West Texas Railway Co.* v. *United States*, 234 U.S. 342, 350-351 (1914); *Lottery Case*, 188 U.S. 321, 346-347 (1903). They bear repetition because of the guides to interpretation which follow from them. As a great principle of the division of power between the states and the national government, as well as a constitutional provision, the exposition of the meaning of the Commerce Clause must be broad enough to admit of adaptation to future demands. Myopia has little place in judicial interpretation of any sort, let alone constitutional interpretation. The challenges to the federal government change from generation to generation; the application of these various purposes to a given piece of legislation naturally must be viewed accordingly. The Commerce Clause, like other clauses in the Constitution, must be "interpreted with suppleness of adaptation and flexibility of meaning. The power is as broad as the need that evokes it." *Carter* v. *Carter Coal Co.*, 298 U.S. 238,

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*It is no longer necessary to discuss the cases earlier in the century which sought to engraft onto the Constitution theories of "proximate cause" which have long since been discredited, even in the law of torts from which they were borrowed. *E.g., Adkins* v. *Children's Hospital*, 261 U.S. 525 (1923), *overruled* by *West Coast Hotel Co.* v. *Parrish*, 300 U.S. 379 (1937); *Hammer* v. *Dagenhart*, 247 U.S. 251 (1918), overruled by *United States* v. *Darby*, 312 U.S. 100 (1941). This line of cases was aberrant and is now simply a historical curiosity.

328 (1936) (separate opinion of Cardozo, J.). See also, *e.g., United States* v. *South-Eastern Underwriters Association,* 322 U.S. 533, 551-552 (1944); *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.,* 301 U.S. 1, 42-43 (1937); *The Minnesota Rate Cases,* 230 U.S. 352, 398 (1913); *Hoke* v. *United States,* 227 U.S. 308, 323 (1913); *Swift and Co.* v. *United States,* 196 U.S. 375, 398-399 (1905); *Pensacola Telegraph Co.* v. *Western Union Telegraph Co.,* 96 U.S. 1, 9, 12 (1877). Of this canon of interpretation, too, Marshall was the admonitor:

> "If, from the imperfection of human language, there should be serious doubts respecting the extent of any given power, it is a well settled rule that the objects for which it was given, especially when those objects are expressed in the instrument itself, should have great influence in the construction. . . . We know of no rule for construing the extent of such powers, other than is given by the language of the instrument which confers them, taken in connection with the purposes for which they were conferred." *Gibbons* v. *Ogden,* 9 Wheat. 1, 188-189 (1824).

So viewed, the Commerce Clause grants to the federal government, at the very least, power to control and regulate the national economy in all its facets, with all its nuances, and with all its multiple implications. It is therefore not surprising that the clause has authorized Congressional regulation of activities which, at first glance, appear only distantly related to what is generally envisioned by the word "commerce." These include the prohibition of transportation of liquor across state lines, although in a personal vehicle and for personal consumption, *United States* v. *Simpson,* 252 U.S. 465 (1920); the carrying of a female across state lines for immoral purposes, either for gain,

Hoke v. *United States,* 227 U.S. 308 (1913), or for personal concubinage, *Caminetti* v. *United States,* 242 U.S. 470 (1917); the carrying of a kidnapped person over state lines, even when to avoid arrest and not for ransom, *Gooch* v. *United States,* 297 U.S. 124 (1936); and the transportation across state lines of stolen automobiles. *Brooks* v. *United States,* 267 U.S. 432 (1925). "Not only . . . may transactions be commerce though non-commercial; they may be commerce though illegal and sporadic. . . ." *United States* v. *South-Eastern Underwriters Association,* 322 U.S. 533, 549-550 (1944).

2. RACIAL DISCRIMINATION, WHEN IN INTERSTATE COMMERCE NO LESS THAN OTHER ASPECTS OF THE PUBLIC WELL-BEING, FALLS WITHIN THE PURVIEW OF THE COMMERCE CLAUSE.

It has long been recognized that racial discrimination of persons traveling from state to state disrupts the orderly flow of commerce. Uniform treatment of human beings is essential in a mobile society. State laws disruptive of this unity can not stand.

In *Hall* v. *DeCuir,* 95 U.S. 485 (1877), the Court held that a state statute prohibiting discrimination by carriers could not constitutionally compel an interstate carrier to give equal rights and privileges to members of all races. In *Morgan* v. *Virginia,* 328 U.S. 373 (1946), the Court held that a state statute requiring segregated facilities could not constitutionally apply to an interstate carrier.

In both cases it was held that the diverse racial regulations of separate states would unduly burden the free flow of interstate commerce, and hence were invalid without the necessity of implementation by Congressional Act:

> "The river Mississippi passes through or along the borders of ten different States, and its tributaries reach

many more. The commerce upon these waters is immense, and its regulation clearly a matter of national concern. If each State was at liberty to regulate the conduct of carriers while within its jurisdiction, the confusion likely to follow could not but be productive of great inconvenience and unnecessary hardship. Each State could provide for its own passengers and regulate the transportation of its own freight, regardless of the interests of others. Nay more, it could prescribe rules by which the carrier must be governed within the State in respect to passengers and property brought from without. On one side of the river or its tributaries he might be required to observe one set of rules, and on the other another. Commerce cannot flourish in the midst of such embarrassments. No carrier of passengers can conduct his business with satisfaction to himself, or comfort to those employing him, if on one side of a State line his passengers, both white and colored, must be permitted to occupy the same cabin, and on the other be kept separate. Uniformity in the regulations by which he is to be governed from one end to the other of his route is a necessity in his business, and to secure it Congress, which is untrammelled by State lines, has been invested with the exclusive legislative power of determining what such regulations shall be." *Hall* v. *DeCuir, supra*, 95 U.S. at 489-490; quoted with approval, *Morgan* v. *Virginia, supra*, 328 U.S. at 384, n. 29.

Similarly, in *Edwards* v. *California*, 314 U.S. 160 (1941), the Court made it quite clear that it would tolerate no state legislation which unreasonably encumbered the means of ingress into the various states. These cases all in-

volve state legislation which directly affronts the jurisdiction of Congress to regulate commerce; and accordingly the Constitution is self-executing. Where a burden of exactly the same nature, but imposed by private companies, and so involving no jurisdictional conflict, was present or potential, Congress has on several occasions exercised its power to achieve unity. Since the passage of the Interstate Commerce Act in 1887, interstate rail carriers have been prohibited from subjecting "any particular person . . . to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. . . ." 24 Stat. 380, 49 U.S.C. § 3(1) The Interstate Commerce Commission early interpreted this section as prohibiting racial discrimination. *Councill* v. *Western & Atlantic Railroad,* 1 I.C.C. 339. In *Mitchell* v. *United States,* 313 U.S. 80 (1941), the Court affirmed that section 3(1) requires that equal facilities be given to all passengers, regardless of race. In *Henderson* v. *United States,* 339 U.S. 816 (1950), the Court made it clear that "equal facilities" means the full, unfettered use of all facilities on an unsegregated and nondiscriminatory basis.

Air carriers subject to the Civil Aeronautics Act are subject to the same strictures, 49 U.S.C. § 484(b), *Fitzgerald* v. *Pan American World Airways, Inc.,* 229 F. 2d 499 (2d Cir. 1956), as are interstate motor carriers and all terminal facilities, whether or not owned or operated by the carrier, which service the passengers with the co-operation or acquiescence of the carrier. 49 U.S.C. § 316(d). *Boynton* v. *Virginia,* 364 U.S. 454 (1960). See *United States* v. *Jackson,* 318 F. 2d 1 (5th Cir. 1963). All of the statutes referred to were passed under the authority granted Congress by the Commerce Clause. No question of the validity of the exercise to prohibit racial discrimination was even raised in these cases.

3. THE CONGRESSIONAL DETERMINATION THAT THE TYPES OF BUSINESS DESCRIBED IN SECTION 201(b)(1) AFFECT COMMERCE IS FULLY JUSTIFIED.

Those cases which have survived have made it clear that the limits of Congressional power under the Commerce Clause are susceptible neither to simple definition nor to precise statement. The power of Congress is not to be defeated solely because the activity sought to be regulated, when considered without reference to the total context in which it arises, occurs prior or subsequent to actual interstate fraud or otherwise is local in character. The determinative test is the practical test enunciated by Marshall: whether the activity sought to be regulated has a real and substantial relation to the national interest, in view of the purposes of the Commerce Clause to permit the Congress to provide for uniformity in all matters affecting the economic well-being of the nation. *E.g., Prudential Insurance Co.* v. *Benjamin,* 328 U.S. 408 (1946); *North American Co.* v. *Securities & Exchange Commission,* 327 U.S. 686 (1946); *United States* v. *South-Eastern Underwriters Association,* 322 U.S. 533 (1944); *Wickard* v. *Filburn,* 317 U.S. 111 (1942); *United States* v. *Darby,* 312 U.S. 100 (1941); *Sunshine Anthracite Coal Co.* v. *Adkins,* 310 U.S. 381 (1940); *Currin* v. *Wallace,* 306 U.S. 1 (1939); *Santa Cruz Fruit Packing Co.* v. *National Labor Relations Board,* 303 U.S. 453 (1938); *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.,* 301 U.S. 1 (1937); *Virginian Railway Co.* v. *System Federation No. 40,* 300 U.S. 515 (1937); *Second Employers' Liability Cases,* 223 U.S. 1 (1912); *Hipolite Egg Co.* v. *United States,* 220 U.S. 45 (1911).

Mr. Justice Cardozo stated the principle this way:

> "Sometimes it is said that the relation [of the activity to commerce] must be 'direct' to bring that

power [of Congress] into play. In many circumstances such a description will be sufficiently precise to meet the needs of the occasion. But a great principle of constitutional law is not susceptible of comprehensive statement in an adjective. The underlying thought is merely this, that 'the law is not indifferent to considerations of degree.' *Schechter Poultry Corp.* v. *United States, supra* [295 U.S. 495], concurring opinion, p. 554. It cannot be indifferent to them without an expansion of the commerce clause that would absorb or imperil the reserved powers of the states. At times, as in the case cited, the waves of causation will have radiated so far that their undulatory motion, if discernible at all, will be too faint or obscure, too broken by cross-currents, to be heeded by the law. In such circumstances the holding is not directed at prices or wages considered in the abstract, but at prices or wages in particular conditions. The relation may be tenuous or the opposite according to the facts. Always the setting of the facts is to be viewed if one would know the closeness of the tie." *Carter* v. *Carter Coal Co.*, 298 U.S. 238, 327-328 (separate opinion).

It is true that Congress cannot by its own will usurp the Court's function to develop the constitutional principles which measure the extent of the jurisdictional competence of that Legislature. On the other hand, Congress, and only Congress, has the capacity and the power to find legislative facts, such as the nature and quality of any effect on commerce which any given activity may have. The Court must accept these findings if they are not capricious.

"Whatever amounts to more or less constant practice, and threatens to obstruct or unduly to burden

the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause, and it is primarily for Congress to consider and decide the fact of the danger and meet it. This court will certainly not substitute its judgment for that of Congress in such a matter unless the relation of the subject to interstate commerce and its effect upon it are clearly non-existent." *Board of Trade of Chicago* v. *Olsen*, 262 U.S. 1; 37 (1923); quoting with approval *Stafford* v. *Wallace*, 258 U.S. 495, 521 (1922).

If, as here, express legislative findings have not been made, then the Court must assume any rational set of facts which the Legislature could have found.

"Even in the absence of [legislative findings and committee reports] . . . the existence of facts supporting the legislative judgment is to be presumed, for regulatory legislation affecting ordinary commercial transactions is not to be pronounced unconstitutional unless in the light of the facts made known or generally assumed it is of such a character as to preclude the assumption that it rests upon some rational basis within the knowledge and experience of the legislators." *United States* v. *Carolene Products Co.*, 304 U.S. 144, 152 (1938). See also *Williamson* v. *Lee Optical of Oklahoma, Inc.*, 348 U.S. 483, 487-488 (1955); *Day-Brite Lighting, Inc.*, v. *Missouri*, 342 U.S. 421, 423 (1952).

The list of possible legislative findings to support section 201 need not be catalogued. It is obvious that many persons of the discriminated-against minority will avoid traveling in areas where they expect to be humiliated and

degraded; that many of the majority will avoid traveling in areas where unfairness to others is an accepted way of life. Congress could rationally find that discrimination poisons the heart of the actor and destroys the initiative of the victim; that indolence, poverty and discontent are the natural byproducts of unfair treatment; and that an atmosphere in which discrimination is prevalent breeds despair and ultimately violence. Surely Congress could find that the climate for economic development in such areas is adversely affected by the discrimination. Congress might well have found that the public accommodations described in the Act constitute an indispensable aspect of travel within the United States. It makes no difference that the accommodations were not described as doing any specified portion of interstate business. Congress might have found that this type of accommodations ordinarily in the future would appeal to travelers. Furthermore, it might have found that discrimination by even a local business of this type would so infect the desirability of the area to out-of-state persons as to burden commerce. *Cf. Wickard* v. *Filburn,* 317 U.S. 111 (1942). Congress might have found that uniform racial treatment of patrons, both in local and in interstate trade, would free the channels of interstate commerce and unfetter the bonds on these channels which currently exist. *Gooch* v. *United States,* 297 U.S. 124 (1936). *Caminetti* v. *United States,* 242 U.S. 470 (1917).

In *Colorado Anti-Discrimination Commission* v. *Continental Air Lines, Inc.,* 372 U.S. 714, 720-721 (1963), the Court emphasized that both the *Hall* and *Morgan* cases, *supra,* were based on the principle which demands a single racial policy in matters affecting commerce. Since *Brown* v. *Board of Education of Topeka,* 349 U.S. 294 (1954) and its progeny, the disparate state legislation which existed when both *Hall* and *Morgan* were decided has disappeared.

Yet Congress could certainly find that the inconvenience and burden on interstate commerce of racial discrimination are not less acute when imposed by private persons than when imposed by governmental decree. It may be true that discrimination by common carriers, because they carry many people along fixed routes, would be more dramatic than is the discrimination against the simple motorist. Congress could well find, however, that discrimination to which section 201 relates is neither isolated nor sporadic, and that its cumulative impact on the economy today is fully as severe as would be discrimination on carriers. It makes no difference that the proprietor of a hotel may not himself have the power to affect commerce that resides in a great carrier. His enterprise is a part of a nationwide industry which cumulatively has such an effect. *United States* v. *South-Eastern Underwriters Association*, 322 U.S. 533 (1944). *Wickard* v. *Filburn*, 317 U.S. 111 (1942). Nor is the fact that actual interstate traffic need not necessarily be involved critical. An activity does not become "interstate" commerce merely because of movement. Such a criterion would reduce the clause to a technicality. It becomes so because it affects "intercourse" among the states, with all the richness of meaning which history implies to that word, *e.g.*, *Bob-Lo Excursion Co.* v. *Michigan*, 333 U.S. 28 (1948).

Slack v. *Atlantic White Tower Systems, Inc.*, 284 F. 2d 746 (4th Cir. 1960), and *Williams* v. *Howard Johnson's Restaurant*, 268 F. 2d 845 (4th Cir. 1959), are not to the contrary.

In the *Williams* case plaintiff alleged discrimination by defendant's restaurant on a major highway north from Washington, D.C. The plaintiff was traveling from New York to Washington at the time of the incident. The Court held at page 848:

> ". . . we do not find that a restaurant is engaged in interstate commerce merely because in the course of its business of furnishing accommodations to the general public it serves persons who are traveling from state to state. As an instrument of local commerce, the restaurant is not subject to the constitutional and statutory provisions discussed above [Art. I, § 8, cl. 3, U.S. Const.; 49 U.S.C. § 3(1)] and, thus, is at liberty to deal with such persons as it may select."

This language might be read to hold that Congress would be without power to legislate in the area, since the restaurant was not "engaged in interstate commerce." On the other hand, all that was necessary for the decision was the holding that section 3(1) does not cover facilities beyond the terminal, since the Act is designed only to regulate the carriers' activity; and that the Commerce Clause is not self-executing against private businesses.

It would be, perhaps, possible to conjure up a hypothetical situation where all would agree that there was no effect on commerce, notwithstanding that the establishment met the literal criteria of the statute. But there is scarcely a statute in existence to which this statement could not apply. This Court has often held that a statute may not constitutionally be applied in a given case, and yet that the statute is constitutional because it expresses a constitutional policy. *Cf.* opinion of Brandeis, J., in *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U.S. 282, 293 (1921). It is not the function of this Court to imagine bizarre circumstances, isolated from the problem sought to be alleviated by the statute, merely to invalidate the statute. Were this not true, little legislation could pass muster.

It is therefore clear that, once the subject matter being regulated is confined to that which affects commerce, the

scope of congressional power is as broad as is the vast residuum of power in the states to legislate for the public welfare known as the "police power." See, *e.g.*, *United States* v. *Darby*, 312 U.S. 100, 104 (1941); *United States* v. *Carolene Products Co.*, 304 U.S. 144, 147 (1938); *Lottery Case*, 188 U.S. 321, 347 (1903); *Gibbons* v. *Ogden*, 9 Wheat. 1, 194 (1824). And when this Court had occasion to consider the validity of state legislation comparable to that in the case at bar, its answer was succinct and unambiguous:

> ". . . certainly so far as the Federal Constitution is concerned there is no doubt that legislation which prohibits discrimination on the basis of race in the use of facilities serving a public function is within the police power of the states. See *Railway Mail Assn.* v. *Corsi*, 326 U. S. 88, 93-94; *Bob-Lo Excursion Co.* v. *Michigan*, 333 U. S. 28, 34." *District of Columbia* v. *John R. Thompson Co., Inc.*, 346 U.S. 100, 109 (1953).

There is no reason why Congress should not have similar powers with respect to businesses subject to its control.

4. THE CONSTITUTIONALITY OF THE STATE ACTION PORTION OF SUBSECTION (b) OF SECTION 201, AS DEFINED IN SUBSECTION (d), IS CLEAR.

That any discrimination, under color of law, or usage enforced by official action is "state action" prohibited by the Equal Protection Clause of the Fourteenth Amendment was definitively decided last term. *Lombard* v. *Louisiana*, 373 U.S. 267 (1963). Comparable requirements of law have been held unconstitutional since *Brown* v. *Board of Education of Topeka*, 349 U.S. 294 (1954). See, *e.g.*, *Bailey* v. *Patterson*, 369 U.S. 31 (1962). Congress in this section has merely implemented the constitutional limitation on

state power by new enforcement provisions (§§ 204-207), while leaving the development of the appropriate substantive principle to the courts. *Cf. National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937).

5. Section 201(b)(1) of the Civil Rights Act of 1964 does not offend the Due Process Clause of the Fifth Amendment.

There remains to be discussed only the question of the curtailment of the liberty of contract and rights to the use of property which the Act imposes on operators of public accommodations. In this respect also the constitutionality of the statute is supported both by precedent and by principle.

We submit that *District of Columbia* v. *John R. Thompson Co., Inc.*, 346 U.S. 100 (1953), is controlling. There the Court upheld a "public accommodations" statute similar in effect to that in the case at bar. We shall accordingly discuss the controlling principles only briefly.

It is, of course, indisputable that the Civil Rights Act of 1964 does restrict unfettered liberty of contract and right to develop property. This fact, however, does not distinguish it from the myriad economic and other regulations at all levels of government which also regulate and curtail theretofore existing personal liberties and rights. These regulations prevent chaos and permit order and progress in an increasingly complex society. The Fifth Amendment is not merely a sanction for anarchy. Its design and effect are to prevent tyranny by precluding arbitrary governmental action. The real constitutional issue here, as in most cases of "substantive due process," is whether the law seeks to effectuate some genuine public benefit and whether the means chosen acts whimsically and arbitrarily against the regulated party. That this is the

only fruitful way to analyze the constitutional issue has often been reiterated by this Court.

> "These correlative rights, that of the citizen to exercise exclusive dominion over property and freely to contract about his affairs, and that of the state to regulate the use of property and the conduct of business, are always in collision. No exercise of the private right can be imagined which will not in some respect, however slight, affect the public; no exercise of the legislative prerogative to regulate the conduct of the citizen which will not to some extent abridge his liberty or affect his property. But subject only to constitutional restraint the private right must yield to the public need.
>
> "The Fifth Amendment, in the field of federal activity, and the Fourteenth, as respects state action, do not prohibit governmental regulation for the public welfare. They merely condition the exertion of the admitted power, by securing that the end shall be accomplished by methods consistent with due process. And the guaranty of due process, as has often been held, demands only that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained." *Nebbia* v. *New York*, 291 U.S. 502, 510, 524-525 (1934). See also *West Coast Hotel Co.* v. *Parrish*, 300 U.S. 379 (1937); *Jacobson* v. *Massachusetts*, 197 U.S. 11 (1905).

Thus it is clear that the constitutional language is not technical or talismanic. Its meaning cannot be derived by arithmetic, semantics or sophistry. The question in each case involves a sensitive constitutional judgment of evalu-

ating the purposes of the legislation involved, and its effect on the populace.

We have already shown that the elimination of discrimination in interstate activities is a proper object of the federal government. In this section, we shall assume that the subject matter of the legislation was cognizable under the Commerce Clause, since if this assumption is wrong, this section is academic. It is also not inappropriate to point out that the national policy against discrimination is so powerful as to preclude the maintenance of any segregated public facilities. *E.g., New Orleans City Park Improvement Association* v. *Detiege,* 252 F. 2d 122 (5th Cir., 1958), aff'd *per curiam,* 358 U.S. 54 (1958) (housing); *Holmes* v. *Atlanta,* 223 F. 2d 93 (5th Cir.), aff'd *per curiam,* 350 U.S. 879 (1955) (public parks and golf courses); *Dawson* v. *Mayor and City Council of Baltimore City,* 220 F. 2d 386 (4th Cir.), aff'd *per curiam,* 350 U.S. 877 (1955) (public beaches). Furthermore, no Court or other such governmental authority may even lend its assistance to the enforcement of purely private discriminatory agreements. *Barrows* v. *Jackson,* 346 U.S. 249 (1953). *Shelley* v. *Kraemer,* 334 U.S. 1 (1948).

It could not reasonably be contended that the same due process limitation on the scope of local governmental activity would also prohibit the federal government from enacting legislation designed to effectuate the principles of due process. Such an assertion of constitutional schizophrenia has been dealt with sharply by this Court in considering a state fair employment practices law. In *Railway Mail Association* v. *Corsi,* 326 U.S. 88 (1944), the appellant association contended that that portion of the New York Civil Rights Law which prohibited discrimination in a labor organization was void under the Fourteenth Amendment. Mr. Justice Reed, in delivering the judgment of a unanimous Court, held:

"A judicial determination that such legislation violated the Fourteenth Amendment would be a distortion of the policy manifested in that amendment, which was adopted to prevent state legislation designed to perpetuate discrimination on the basis of race or color. We see no constitutional basis for the contention that a state cannot protect workers from exclusion solely on the basis of race, color or creed by an organization, functioning under the protection of the state, which holds itself out to represent the general business needs of employees." *Id.* at 93-94.

Mr. Justice Frankfurter, in a separate concurrence devoted solely to this point, expressed his view as follows:

"Elaborately to argue against this contention is to dignify a claim devoid of constitutional substance. Of course a State may leave abstention from such discriminations to the conscience of individuals. On the other hand, a State may choose to put its authority behind one of the cherished aims of American feeling by forbidding indulgence in racial or religious prejudice to another's hurt. To use the Fourteenth Amendment as a sword against such State power would stultify that Amendment. Certainly the insistence by individuals on their private prejudices as to race, color or creed, in relations like those now before us, ought not to have a higher constitutional sanction than the determination of a State to extend the area of non-discrimination beyond that which the Constitution itself exacts." *Id.* at 98.

In *Levitt & Sons, Inc.*, v. *Division Against Discrimination*, 31 N.J. 514, 158 A. 2d 177 (1960), the Supreme Court

of New Jersey upheld legislation prohibiting discrimination in publicly assisted housing. The relationship of landlord to tenant, of course, is much closer, longer lasting and financially significant than is the casual relationship of transient guest to hotel owner. The curtailment of the landlord's "liberty" and "freedom of property" in the New Jersey case was accordingly much more substantial than is that entailed by section 201. Nonetheless, when the decision was appealed on constitutional grounds, this Court dismissed it for want of a substantial federal question. *Levitt & Sons, Inc.*, v. *Division Against Discrimination*, 363 U.S. 418 (1960). See also, *e.g.*, *Holland* v. *Edwards*, 307 N.Y. 38, 119 N.E. 2d 581 (1954), upholding New York's Fair Employment Practices Law; *Massachusetts Commission Against Discrimination* v. *Colangelo*, 344 Mass. 387, 182 N.E. 2d 595 (1962), upholding Massachusetts' Fair Housing Practices Law.

It is noteworthy that over half the states have "public accommodations" laws. See *Morgan* v. *Virginia*, 328 U.S. 373, 382, n. 24 (1946); Alaska Comp. Laws Ann. §§ 20-1-34; Idaho Code Ann. §§ 18-1701-03; Maine Rev. Stat. Ann. c. 137, § 50; Mont. Rev. Code Ann. § 64-211; N.H. Rev. Stat. Ann. c. 354; N.M. Stat. Ann. 49-8-1-6; N. Dak. Cent. Code § 12-22-30; Ore. Rev. Stat. §§ 30, 670-680; Vt. Stat. Ann. tit. 13 §§ 1451-52; Wyoming Laws, 1961, c. 103. Such laws have existed since 1865. See Mass. Stat. 1865, c. 277. Their passage was suggested to be an appropriate exercise of state legislative power in the *Civil Rights Cases*, 109 U.S. 3, 24 (1883). The constitutionality of such statutes against due process objections never has been seriously questioned. See, *e.g.*, *Crawford* v. *Robert L. Kent, Inc.*, 341 Mass. 125, 167 N.E. 2d 620 (1960); *Opinion of the Justices*, 247 Mass. 589, 595, 143 N.E. 808 (1924). The goals sought to be achieved by the legislation are harmony, confrontation of many persons of diverse backgrounds, freedom of move-

ment and better intercourse among the citizens of the various states. It is no answer to allege that Congress is "seeking to legislate morals." Congress is not so doing. It is seeking to control overt, anti-social behavior which adversely affects citizens and the nation. In so doing, it is performing its constitutional mandate. If the requirement that landlords shall rent without discrimination does not present even a substantial federal question, surely the requirement that hotel owners admit overnight guests on the same basis is no more substantial.

Conclusion.

For the foregoing reasons the questioned statute should be held to be constitutional.

Respectfully submitted,

EDWARD W. BROOKE,

Attorney General of Massachusetts.

SUPREME COURT OF THE UNITED STATES

No. 515.—October Term, 1964.

Heart of Atlanta Motel, Inc., Appellant, *v.* United States et al.	On Appeal From the United States District Court for the Northern District of Georgia.

[December 14, 1964.]

Mr. Justice Clark delivered the opinion of the Court.

This is a declaratory judgment action, 28 U. S. C. § 2201 and § 2202, attacking the constitutionality of Title II of the Civil Rights Act of 1964, 78 Stat 241.[1] In addition to declaratory relief the complaint sought an injunction restraining the enforcement of the Act and damages against respondents based on allegedly resulting injury in the event compliance was required. Appellees counterclaimed for enforcement under § 206 (a) of the Act and asked for a three-judge district court under § 206 (b). A three-judge court, empaneled under § 206 (b) as well as 28 U. S. C. § 2282, sustained the validity of the Act and issued a permanent injunction on appellee's counterclaim restraining appellants from continuing to violate the Act which remains in effect on order of Mr. Justice Black, 85 Sup. Ct. 1. We affirm the judgment.

1. *The Factual Background and Contentions of the Parties.*

The case comes here on admissions and stipulated facts. Appellant owns and operates the Heart of Atlanta Motel which has 216 rooms available to transient guests. The motel is located on Courtland Street, two blocks from downtown Peachtree Street. It is readily accessible to interstate highways 75 and 85 and state highways 23 and 41. Appellant solicits patronage from outside the

[1] See Appendix.

State of Georgia through various national advertising media, including magazines of national circulation; it maintains over 50 billboards and highway signs within the State, soliciting patronage for the motel; it accepts convention trade from outside Georgia and approximately 75% of its registered guests are from out of State. Prior to passage of the Act the motel had followed a practice of refusing to rent rooms to Negroes, and it alleged that it intended to continue to do so. In an effort to perpetuate that policy this suit was filed.

The appellant contends that Congress in passing this Act exceeded its power to regulate commerce under Art. I, § 8, cl. 3, of the Constitution of the United States; that the Act violates the Fifth Amendment because appellant is deprived of the right to choose its customers and operate its business as it wishes, resulting in a taking of its liberty and property without due process of law and a taking of its property without just compensation; and, finally, that by requiring appellant to rent available rooms to Negroes against its will, Congress is subjecting it to involuntary servitude in contravention of the Thirteenth Amendment.

The appellees counter that the unavailability to Negroes of adequate accommodations interferes significantly with interstate travel, and that Congress, under the Commerce Clause, has power to remove such obstructions and restraints; that the Fifth Amendment does not forbid reasonable regulation and that consequential damage does not constitute a "taking" within the meaning of that amendment; that the Thirteenth Amendment claim fails because it is entirely frivolous to say that an amendment directed to the abolition of human bondage and the removal of widespread disabilities associated with slavery places discrimination in public accommodations beyond the reach of both federal and state law.

At the trial the appellant offered no evidence, submitting the case on the pleadings, admissions and stipulation of facts; however, appellees proved the refusal of the motel to accept Negro transients after the passage of the Act. The District Court sustained the constitutionality of the sections of the Act under attack (§§ 201 (a), (b) (1) and (c) (1)) and issued a permanent injunction on the counterclaim of the appellees. It restrained the appellant from "refusing to accept Negroes as guests in the motel by reason of their race or color" and from "making any distinction whatever upon the basis of race or color in the availability of the goods, services, facilities, privileges, advantages or accommodations offered or made available to guests of the motel, or to the general public, within or upon any of the premises of the Heart of Atlanta Motel, Inc."

2. *The History of the Act.*

Congress first evidenced its interest in civil rights legislation in the Civil Rights or Enforcement Act of April 9, 1866.[2] There followed a series of six Acts,[3] culminating in the Civil Rights Act of March 1, 1875.[4] In 1883 this Court struck down the public accommodations sections of the 1875 Act in *The Civil Rights Cases*, 109 U. S. 3. No major legislation in this field had been enacted by Congress for 82 years when the Civil Rights Act of 1957[5] became law. It was followed by the Civil Rights Act of 1960.[6] Three years later, on June 19, 1963, the late President Kennedy called for civil rights legislation in a

[2] 14 Stat. 27.

[3] Slave Kidnapping Act, 14 Stat. 50; Peonage Abolition Act of March 2, 1867, 14 Stat. 546; Act of May 31, 1870, 16 Stat. 140; Anti-Lynching Act of April 20, 1871, 17 Stat. 13.

[4] Civil Rights Act of March 1, 1875, 18 Stat. 335.

[5] 71 Stat. 634.

[6] 74 Stat. 86.

message to Congress to which he attached a proposed bill. Its stated purpose was

> to promote the general welfare, by eliminating discrimination based on race, color, religion, or national origin in . . . public accommodations through the exercise by Congress of the powers conferred upon it . . . to enforce the provisions of the Fourteenth and Fifteenth Amendments, to regulate commerce among the several states, and to make laws necessary and proper to execute the powers conferred upon it by the Constitution.

Bills were introduced in each House of the Congress, embodying the President's suggestion, the one in the Senate being S. 1732[1] and that in the House, H. R. 7152. However, it was not until July 2, 1964 that the Civil Rights Bill of 1964, here under attack, was finally passed.

After extended hearings each of these bills was favorably reported to its respective house, H. R. 7152 on November 20, 1963, H. R. Rep. No. 914, 88th Cong., 1st Sess., and S. 1732 on February 10, 1964, S. Rep. No. 872, 88th Cong., 2d Sess. Although each bill originally incorporated extensive findings of fact these were eliminated from the bills as they were reported. The House passed its bill in January 1964, and sent it to the Senate. Through a bipartisan coalition of Senators Humphrey and Dirksen, together with other Senators, a substitute was worked out in informal conferences. This substitute was adopted by the Senate and sent to the House where it was adopted without change. This expedited procedure prevented the usual report on the substitute bill in the Senate as well as a Conference Committee report

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[1] A second Senate bill, S. 1731, was based solely on the Fourteenth Amendment. The Senate Judiciary Committee conducted the hearings on S. 1731, while the Committee on Commerce considered S. 1732.

ordinarily filed in such matters. Our only frame of reference as to the legislative history of the Act is, therefore, the hearings, reports and debates on the respective bills in each house.

The Act as finally adopted was most comprehensive, undertaking to prevent through peaceful and voluntary settlement discrimination in voting, as well as in places of accommodation and public facilities, federally secured programs and in employment. Since Title II is the only portion under attack here, we confine our consideration to those public accommodation provisions.

3. *Title II of the Act.*

This Title is divided into seven sections beginning with § 201 (a) which provides that:

> All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

There are listed in § 201 (b) four classes of business establishments, each of which "serves the public" and "is a place of public accommodation" within the meaning of § 201 (a) "if its operations affect commerce, or if discrimination or segregation by it is supported by State action." The covered establishments are:

> (1) any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;
>
> (2) any restaurant, cafeteria . . . [not here involved];

(3) any motion picture house . . . [not here involved];

(4) any establishment . . . which is physically located within the premises of any establishment otherwise covered by this subsection, or . . . within the premises of which is physically located any such covered establishment . . . [not here involved].

Section 201 (c) defines the phrase "affect commerce" as applied to the above establishments. It first declares that "any inn, hotel, motel, or other establishment which provides lodging to transient guests" affects commerce *per se*. Restaurants, cafeterias, etc., in the second class affect commerce only if they serve or offer to serve interstate travelers or if a substantial portion of the food which they serve or products which they sell have "moved in commerce." Motion picture houses and other places listed in class three affect commerce if they customarily present films, performances, etc., "which move in commerce." And the establishments listed in class four affect commerce if they are within, or include within their own premises, an establishment "the operations of which affect commerce." Private clubs are excepted under certain conditions. See § 201 (e).

Section 201 (d) declares that "discrimination or segregation" is supported by state action when carried on under color of any law, statute, ordinance, regulation or any custom or usage required or enforced by officials of the State or any of its subdivisions.

In addition, § 202 affirmatively declares that all persons "shall be entitled to be free, at any establishment or place, from discrimination or segregation of any kind on the ground of race, color, religion, or national origin, if such discrimination or segregation is or purports to be required by any law, statute, ordinance, regulation, rule, or order of a State or any agency or political subdivision thereof."

Finally § 203 prohibits the withholding or denial, etc., of any right or privilege secured by § 201 and § 202 or the intimidation, threatening or coercion of any person with the purpose of interfering with any such right or the punishing, etc., of any person for exercising or attempting to exercise any such right.

The remaining sections of the Title are remedial ones for violations of any of the previous sections. Remedies are limited to civil actions for preventive relief. The Attorney General may bring suit where he has "reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this title, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described . . . ." § 206 (a). Thirty days written notice before filing any such action must be given to the appropriate authorities of a State or subdivision the law of which prohibits the act complained of and which has established an authority which may grant relief therefrom. § 204 (c). In States where such condition does not exist the court after a case is filed may refer it to the Community Relations Service which is established under Title X of the Act. § 204 (d). This Title establishes such service in the Department of Commerce, provides for a Director to be appointed by the President with the advice and consent of the Senate and grants it certain powers, including the power to hold hearings, with reference to matters coming to its attention by reference from the court or between communities and persons involved in disputes arising under the Act.

4. *Application of Title II to Heart of Atlanta Motel.*

It is admitted that the operation of the motel brings it within the provisions of § 201 (a) of the Act and that

appellant refused to provide lodging for transient Negroes because of their race or color and that it intends to continue that policy unless restrained.

The sole question posed is, therefore, the constitutionality of the Civil Rights Act of 1964 as applied to these facts. The legislative history of the Act indicates that Congress based the Act on § 5 and the Equal Protection Clause of the Fourteenth Amendment as well as its power to regulate interstate commerce under Art. I, § 8, cl. 3 of the Constitution.

The Senate Commerce Committee made it quite clear that the fundamental object of Title II was to vindicate "the deprivation of personal dignity that surely accompanies denials of equal access to public establishments." At the same time, however, it noted that such an objective has been and could be readily achieved "by congressional action based on the commerce power of the Constitution." S. Rep. No. 872, at 16–17. Our study of the legislative record, made in the light of prior cases, has brought us to the conclusion that Congress possessed ample power in this regard, and we have therefore not considered the other grounds relied upon. This is not to say that the remaining authority upon which it acted was not adequate, a question upon which we do not pass, but merely that since the commerce power is sufficient for our decision here we have considered it alone. Nor is § 201 (d) or § 202, having to do with state action, involved here and we do not pass upon those sections.

5. *The Civil Rights Cases, 109 U. S. 3 (1883), and their Application.*

In light of our ground for decision, it might be well at the outset to discuss the *Civil Rights Cases, supra*, which declared provisions of the Civil Rights Act of 1875 unconstitutional. 18 Stat. 335, 336. We think that

decision inapposite, and without precedential value in determining the constitutionality of the present Act. Unlike Title II of the present legislation, the 1875 Act broadly proscribed discrimination in "inns, public conveyances on land or water, theaters, and other public places of amusement," without limiting the categories of affected businesses to those impinging upon interstate commerce. In contrast, the applicability of Title II is carefully limited to enterprises having a direct and substantial relation to the interstate flow of goods and people, except where state action is involved. Further, the fact that certain kinds of businesses may not in 1875 have been sufficiently involved in interstate commerce to warrant bringing them within the ambit of the commerce power is not necessarily dispositive of the same question today. Our populace had not reached its present mobility, nor were facilities, goods and services circulating as readily in interstate commerce as they are today. Although the principles which we apply today are those first formulated by Chief Justice Marshall in *Gibbons* v. *Ogden*, 9 Wheat. 1 (1824), the conditions of transportation and commerce have changed dramatically, and we must apply those principles to the present state of commerce. The sheer increase in volume of interstate traffic alone would give discriminatory practices which inhibit travel a far larger impact upon the nation's commerce than such practices had in the economy of another day. Finally, there is language in the *Civil Rights Cases* which indicates that the Court did not fully consider whether the 1875 Act could be sustained as an exercise of the commerce power. Though the Court observed that "no one will contend that the power to pass it was contained in the Constitution before adoption of the last three amendments (Thirteenth, Fourteenth, and Fifteenth)," the Court went on specifically to note that the

Act was not "conceived" in terms of the commerce power and expressly pointed out:

> Of course, these remarks [as to lack of congressional power] do not apply to those cases in which Congress is clothed with direct and plenary powers of legislation over the whole subject, accompanied with an express or implied denial of such power to the States, as in the regulation of commerce with foreign nations, among the several States, and with the Indian tribes . . . . In these cases Congress has power to pass laws for regulating the subjects specified in every detail, and the conduct and transactions of individuals in respect thereof. [At 18.]

Since the commerce power was not relied on by the Government and was without support in the record it is understandable that the Court narrowed its inquiry and excluded the Commerce Clause as a possible source of power. In any event, it is clear that such a limitation renders the opinion devoid of authority for the proposition that the Commerce Clause gives no power to Congress to regulate discriminatory practices now found substantially to affect interstate commerce. We, therefore, conclude that the *Civil Rights Cases* have no relevance to the basis of decision here where the Act not only explicitly relies upon the commerce power, but the record is filled with testimony of obstructions and restraints resulting from the discriminations found to be existing. We now pass to that phase of the case.

6. *The Basis of Congressional Action.*

While the Act as adopted carried no congressional findings the record of its passage through each house is replete with evidence of the burdens that discrimination by race or color places upon interstate commerce. See Hearings before Senate Committee on Commerce on

S. 1732, 88th Cong., 1st Sess.; S. Rep. No. 872, *supra*; Hearings before Senate Committee on the Judiciary on S. 1731, 88th Cong., 1st Sess.; Hearings before House Subcommittee No. 5 on miscellaneous proposals regarding Civil Rights, 88th Cong., 1st Sess., ser. 4; H. R. Rep. No. 914, *supra*. This testimony included the fact that our people have become increasingly mobile with millions of all races traveling from State to State; that Negroes in particular have been the subject of discrimination in transient accommodations, having to travel great distances to secure the same; that often they have been unable to obtain accommodations and have had to call upon friends to put them up overnight, S. Rep. No. 872, at 14–22; and that these conditions had become so acute as to require the listing of available lodging for Negroes in a special guidebook which was itself "dramatic testimony of the difficulties" Negroes encounter in travel, Senate Commerce Hearings, at 692–694. These exclusionary practices were found to be nationwide, the Under Secretary of Commerce testifying that there is "no question that this discrimination in the North still exists to a large degree" and in the West and Midwest as well. Senate Commerce Hearings, at 735, 744. This testimony indicated a qualitative as well as quantitive effect on interstate travel by Negroes. The former was the obvious impairment of the Negro traveler's pleasure and convenience that resulted when he continually was uncertain of finding lodging. As for the latter, there was evidence that this uncertainty stemming from racial discrimination had the effect of discouraging travel on the part of a substantial portion of the Negro community. Senate Commerce Hearings, at 744. This was the conclusion not only of the Under Secretary of Commerce but also of the Administrator of the Federal Aviation Agency who wrote the Chairman of the Senate

Commerce Committee that it was his "belief that air commerce is adversely affected by the denial to a substantial segment of the traveling public of adequate and desegregated public accommodations." Senate Commerce Hearings, at 12–13. We shall not burden this opinion with further details since the voluminous testimony presents overwhelming evidence that discrimination by hotels and motels impedes interstate travel.

7. *The Power of Congress Over Interstate Travel.*

The power of Congress to deal with these obstructions depends on the meaning of the Commerce Clause. Its meaning was first enunciated 140 years ago by the great Chief Justice John Marshall in *Gibbons* v. *Ogden*, 9 Wheat. 1 (1824), in these words:

> The subject to be regulated is commerce; and . . . to ascertain the extent of the power, it becomes necessary to settle the meaning of the word. The counsel for the appellee would limit it to traffic, to buying and selling, or the interchange of commodities . . . but it is something more: it is intercourse . . . between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse. [At 189–190.]
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> . . . . . .
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> To what commerce does this power extend? The constitution informs us, to commerce "with foreign nations, and among the several States, and with the Indian tribes."
>
> It has, we believe, been universally admitted, that these words comprehend every species of commercial intercourse . . . . No sort of trade can be carried on . . . to which this power does not extend. [At 193–194.]
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> . . . . . .

The subject to which the power is next applied, is to commerce "among the several States." The word "among" means intermingled . . . .

. . . . .

[I]t may very properly be restricted to that commerce which concerns more States than one. . . . The genius and character of the whole government seems to be, that its action is to be applied to all the . . . internal concerns [of the nation] which affect the States generally; but not to those which are completely within a particular State, which do not affect other States, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the government. [At 194–195.]

. . . . . .

We are now arrived at the inquiry—What is this power?

It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution. . . . If, as has always been understood, the sovereignty of Congress . . . is plenary as to those objects [specified in the Constitution], the power over commerce . . . is vested in Congress as absolutely as it would be in a single government, having in its constitution the same restrictions on the exercise of the power as are found in the constitution of the United States. The wisdom and the discretion of Congress, their identity with the people, and the influence which their constituents possess at elections, are, in this, as in many

> other instances, as that, for example, of declaring war, the sole restraints on which they have relied, to secure them from its abuse. They are the restraints on which the people must often rely solely, in all representative governments. [At 196–197.]

In short, the determinative test of the exercise of power by the Congress under the Commerce Clause is simply whether the activity sought to be regulated is "commerce which concerns more than one state" and has a real and substantial relation to the national interest. Let us now turn to this facet of the problem.

That the "intercourse" of which the Chief Justice spoke included the movement of persons through more States than one was settled as early as 1849, in the *Passenger Cases*, 7 How. 283, where Mr. Justice McLean stated: "That the transportation of passengers is a part of commerce is not now an open question." At 401. Again in 1913 Mr. Justice McKenna, speaking for the Court, said: "Commerce among the States, as we have said, consists of intercourse and traffic between their citizens, and includes the transportation of persons and property." *Hoke* v. *United States*, 227 U. S. 308, 320. And only four years later in 1916 in *Caminetti* v. *United States*, 242 U. S. 470, Mr. Justice Day held for the Court:

> The transportation of passengers in interstate commerce, it has long been settled, is within the regulatory power of Congress, under the commerce clause of the Constitution, and the authority of Congress to keep the channels of interstate commerce free from immoral and injurious uses has been frequently sustained, and is no longer open to question. [At 491.]

Nor does it make any difference whether the transportation is commercial in character. *Id.*, at 484–486. In

Morgan v. *Virginia*, 328 U. S. 373 (1946), Mr. Justice Reed observed as to the modern movement of persons among the States:

> The recent changes in transportation brought about by the coming of automobiles does not seem of great significance in the problem. People of all races travel today more extensively than in 1878 when this Court first passed upon state regulation of racial segregation in commerce. [It but] emphasizes the soundness of this Court's early conclusion in *Hall* v. *DeCuir*, 95 U. S. 485. [At 383.]

The same interest in protecting interstate commerce which led Congress to deal with segregation in interstate carriers and the white slave traffic has prompted it to extend the exercise of its power to gambling, *Lottery Case*, 188 U. S. 321 (1903); to criminal enterprises, *Brooks* v. *United States*, 267 U. S. 432 (1925); to deceptive practices in the sale of products, *Federal Trade Comm'n* v. *Mandel Bros., Inc.*, 359 U. S. 385 (1959); to fraudulent security transactions, *Securities & Exchange Comm'n* v. *Ralston Purina Co.*, 346 U. S. 119 (1953); to misbranding of drugs, *Weeks* v. *United States*, 245 U. S. 618 (1918); to wages and hours, *United States* v. *Darby*, 312 U. S. 100 (1941); to members of labor unions, *Labor Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1 (1937); to crop control, *Wickard* v. *Filburn*, 317 U. S. 111 (1942); to discrimination against shippers, *United States* v. *Baltimore & Ohio R. Co.*, 333 U. S. 169 (1948); to the protection of small business from injurious price cutting, *Moore* v. *Mead's Fine Bread Co.*, 348 U. S. 115 (1954); to resale price maintenance, *Hudson Distributors, Inc.* v. *Eli Lilly & Co.*, 377 U. S. 386 (1964); *Schwegmann* v. *Calvert Distillers Corp.*, 341 U. S. 384 (1951); to professional football, *Radovich* v. *National Football League*, 352 U. S. 445 (1957); and to racial discrimina-

tion by owners and managers of terminal restaurants. *Boynton* v. *Virginia*, 364 U. S. 454 (1960).

That Congress was legislating against moral wrongs in many of these areas rendered its enactments no less valid. In framing Title II of this Act Congress was also dealing with what it considered a moral problem. But that fact does not detract from the overwhelming evidence of the disruptive effect that racial discrimination has had on commercial intercourse. It was this burden which empowered Congress to enact appropriate legislation, and, given this basis for the exercise of its power, Congress was not restricted by the fact that the particular obstruction to interstate commerce with which it was dealing was also deemed a moral and social wrong.

It is said that the operation of the motel here is of a purely local character. But, assuming this to be true, "if it is interstate commerce that feels the pinch, it does not matter how local the operation that applies the squeeze." *United States* v. *Women's Sportswear Mfrs. Assn.*, 336 U. S. 460, 464 (1949). See *Labor Board* v. *Jones & Laughlin Steel Corp.*, *supra*. As Chief Justice Stone put it in *United States* v. *Darby*, *supra*:

> The power of Congress over interstate commerce is not confined to the regulation of commerce among the states. It extends to those activities intrastate which so affect interstate commerce or the exercise of the power of Congress over it as to make regulation of them appropriate means to the attainment of a legitimate end, the exercise of the granted power of Congress to regulate interstate commerce. See *McCulloch* v. *Maryland*, 4 Wheat. 316, 421. [At 118.]

Thus the power of Congress to promote interstate commerce also includes the power to regulate the local incidents thereof, including local activities in both the States of origin and destination, which might have a substantial

and harmful effect upon that commerce. One need only examine the evidence which we have discussed above to see that Congress may—as it has—prohibit racial discrimination by motels serving travelers, however "local" their operations may appear.

Nor does the Act deprive appellant of liberty or property under the Fifth Amendment. The commerce power invoked here by the Congress is a specific and plenary one authorized by the Constitution itself. The only questions are: (1) whether Congress had a rational basis for finding that racial discrimination by motels affected commerce, and (2) if it had such a basis, whether the means it selected to eliminate that evil are reasonable and appropriate. If they are, appellant has no "right" to select its guests as it sees fit, free from governmental regulation.

There is nothing novel about such legislation. Thirty-two States [8] now have it on their books either by statute

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[8] The following States have enacted public accommodation laws: Alaska Stats. §§ 11.60.230–11.60.240 (1962); Calif. Civil Code §§ 51–54 (1954); Colo. Rev. Stats. §§ 25–1–1 to 25–2–5 (1953); Conn. Gen. Stats. Ann. § 53.35 (1961); Del. Code Ann. Tit. 6, c. 45 (1963); Idaho Code §§ 18–7301 through 18–7303 (1961); Ill. Ann. Stats. (Smith-Hurd ed.) c. 38 §§ 13–1 to 13–4 (1961) c. 43 § 133 (1944); Ind. Stats. Ann. (Burns ed.) §§ 10–901 to 10–914 (1961); Iowa Code Ann. §§ 735.1–735.2 (1950); Kan. Gen. Stats. Ann. § 21–2424 (Supp. 1962); Maine Rev. Stats. C. 137 § 50 (1954); Md. Ann. Code § 49 B § 11 (1964); Mass. Ann. Laws C. 140 §§ 5 and 8 (1957), c. 272 §§ 92A, 9B (1963); Mich. Stats. Ann. §§ 28.343 and 28.344 (1962); Minn. Stats. Ann. § 327.09 (1947); Mont. Rev. Codes, Tit. 64, § 211 (1962); Neb. Rev. Stats. C. 20 §§ 101 and 102 (1954); N. H. Rev. Stats. Ann. C. 354 §§ 1, 2, 4 and 5 (1963); N. J. Stats. Ann., Tit. 10, §§ 1–2 to 1–7; Tit. 18, §§ 25–1 to 25.6 (1963); N. M. Stats. Ann. §§ 49–8–1 to 49–8–6 (1963); N. Y. Civil Rights Law (McKinney's ed.) Art. 4, §§ 40, 41 (1946); Exec. Law Art. 15, § 2901 (1964); Penal Law Art. 46, §§ 513–515 (1944); N. Dak. Cent. Code § 12–22–30 (1963); Ohio Rev. Code (Page's ed.) §§ 2901–35 and 2901–36 (1954); Oreg. Rev. Stats. §§ 30–670, 30–675, 30–680; (1963); Penn. Stats. Ann., Tit. 18, § 4654 (1963);

or executive order and many cities provide such regulation. Some of these Acts go back four-score years. It has been repeatedly held by this Court that such laws do not violate the Due Process Clause of the Fourteenth Amendment. Perhaps the first such holding was in the *Civil Rights Cases*, themselves, where Mr. Justice Bradley for the Court inferentially found that innkeepers, "by the laws of all of the States, so far as we are aware, are bound, to the extent of their facilities, to furnish proper accommodation to all unobjectionable persons who in good faith apply for them." At 25.

As we have pointed out, 32 States now have such statutes and no case has been cited to us where the attack on a state statute has been successful, either in federal or state courts. Indeed, in some cases the Due Process and Equal Protection Clause objections have been specifically discarded in this Court. *Bob-Lo Excursion Co.* v. *Michigan*, 333 U. S. 28, 34, n. 12 (1948). As a result the constitutionality of such state statutes stands unquestioned. "The authority of the Federal Government over interstate commerce does not differ," it was held in *United States* v. *Rock Royal Co-op., Inc.*, 307 U. S. 533 (1939). "in extent or character from that retained by the states over intrastate commerce." At 569–570. See also *Bowles* v. *Willingham*, 321 U. S. 503 (1944).

It is doubtful if in the long run appellant will suffer economic loss as a result of the Act. Experience is to the

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R. I. Gen. Laws §§ 11-24-1 to 11-24-6 (1956); S. Dak. Sess. Laws C. 58 (1963); Vt. Stats. Ann., Tit. 13, §§ 1451, 1452 (1958); Wash. Rev. Code Ann. §§ 49.60.010 to 49.60-170, 9.91.010 (1962); Wis. Stats. Ann. § 942-04 (1958); Wyo. Stats. Ann. § 6-83.1, 6-83.2 (1963).

In 1963 the Governor of Kentucky issued an executive order requiring all governmental agencies involved in the supervision or licensing of businesses to take all lawful action necessary to prevent racial discrimination.

contrary where discrimination is completely obliterated as to all public accommodations. But whether this be true or not is of no consequence since this Court has specifically held that the fact that a "member of the class which is regulated may suffer economic losses not shared by others . . . has never been a barrier" to such legislation. *Bowles* v. *Willingham*, *supra*, at 518. Likewise in a long line of cases this Court has rejected the claim that the prohibition of racial discrimination in public accommodations interferes with personal liberty. See *District of Columbia* v. *John R. Thompson Co.*, 346 U. S. 100 (1953), and cases there cited, where we concluded that Congress had delegated law-making power to the District of Columbia "as broad as the police power of a state" which included the power to adopt "a law prohibiting discriminations against Negroes by the owners and managers of restaurants in the District of Columbia." At 110. Neither do we find any merit in the claim that the Act is a taking of property without just compensation. The cases are to the contrary. See *Legal Tender Cases*, 12 Wall. 457, 551 (1870); *Omnia Commercial Co.* v. *United States*, 261 U. S. 502 (1923); *United States* v. *Central Eureka Mining Co.*, 357 U. S. 155 (1958).

We find no merit in the remainder of appellant's contentions, including that of "involuntary servitude." As we have seen, 32 States prohibit racial discrimination in public accommodations. These laws but codify the common-law innkeeper rule which long predated the Thirteenth Amendment. It is difficult to believe that the Amendment was intended to abrogate this principle. Indeed, the opinion of the Court in *The Civil Rights Cases* is to the contrary as we have seen, it having noted with approval the laws of "all of the states" prohibiting discrimination. We could not say that the requirements

of the Act in this regard are in any way "akin to African slavery." *Butler* v. *Perry*, 240 U. S. 328, 332 (1916).

We, therefore, conclude that the action of the Congress in the adoption of the Act as applied here to a motel which concededly serves interstate travelers is within the power granted it by the Commerce Clause of the Constitution, as interpreted by this Court for 140 years. It may be argued that Congress could have pursued other methods to eliminate the obstructions it found in interstate commerce caused by racial discrimination. But this is a matter of policy that rests entirely with the Congress not with the courts. How obstructions in commerce may be removed—what means are to be employed—is within the sound and exclusive discretion of the Congress. It is subject only to one *caveat*—that the means chosen by it must be reasonably adapted to the end permitted by the Constitution. We cannot say that its choice here was not so adapted. The Constitution requires no more.

Affirmed.

APPENDIX.

Title II—INJUNCTIVE RELIEF AGAINST DISCRIMINATION IN PLACES OF PUBLIC ACCOMMODATION

SEC. 201. (a) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

(b) Each of the following establishments which serves the public is a place of public accommodation within the meaning of this title if its operations affect commerce, or if discrimination or segregation by it is supported by State action:

(1) any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;

(2) any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment; or any gasoline station;

(3) any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment; and

(4) any establishment (A) (i) which is physically located within the premises of any establishment otherwise covered by this subsection, or (ii) within the premises of which is physically located any such covered establishment, and (B) which holds itself out as serving patrons of such covered establishment.

(c) The operations of an establishment affect commerce within the meaning of this title if (1) it is one of the establishments described in paragraph (1) of subsection (b); (2) in the case of an establishment described in paragraph (2) of subsection (b), it serves or offers to serve interstate travelers or a substantial portion of the food which it serves, or gasoline or other products which it sells, has moved in commerce; (3) in the case of an establishment described in paragraph (3) of subsection (b), it customarily presents films, performances, athletic teams, exhibitions, or other sources of entertainment which move in commerce; and (4) in the case of an establishment described in paragraph (4) of subsection (b), it is physically located within the premises of, or there is physically located within its premises, an establishment the operations of which affect commerce within the meaning of this subsection. For purposes of this section, "commerce" means travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any State, or between any foreign country or any territory or possession and any State or the District of Columbia, or between points in the same State but through any other State or the District of Columbia or a foreign country.

(d) Discrimination or segregation by an establishment is supported by State action within the meaning of this title if such discrimination or segregation (1) is carried on under color of any law, statute, ordinance, or regulation; or (2) is carried on under color of any custom or usage required or enforced by officials of the State or political subdivision thereof; or (3) is required by action of the State or political subdivision thereof.

(e) The provisions of this title shall not apply to a private club or other establishment not in fact open to the public, except to the extent that the facilities of such establishment are made available to the customers or

patrons of an establishment within the scope of subsection (b).

SEC. 202. All persons shall be entitled to be free, at any establishment or place, from discrimination or segregation of any kind on the ground of race, color, religion, or national origin, if such discrimination or segregation is or purports to be required by any law, statute, ordinance, regulation, rule, or order of a State or any agency or political subdivision thereof.

SEC. 203. No person shall (a) withhold, deny, or attempt to withhold or deny, or deprive or attempt to deprive, any person of any right or privilege secured by section 201 or 202, or (b) intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person with the purpose of interfering with any right or privilege secured by section 201 or 202, or (c) punish or attempt to punish any person for exercising or attempting to exercise any right or privilege secured by section 201 or 202.

SEC. 204. (a) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 203, a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the person aggrieved and, upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the civil action without the payment of fees, costs, or security.

(b) In any action commenced pursuant to this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's

fee as part of the costs, and the United States shall be liable for costs the same as a private person.

(c) In the case of an alleged act or practice prohibited by this title which occurs in a State, or political subdivision of a State, which has a State or local law prohibiting such act or practice and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no civil action may be brought under subsection (a) before the expiration of thirty days after written notice of such alleged act or practice has been given to the appropriate State or local authority by registered mail or in person, provided that the court may stay proceedings in such civil action pending the termination of State or local enforcement proceedings.

(d) In the case of an alleged act or practice prohibited by this title which occurs in a State, or political subdivision of a State, which has no State or local law prohibiting such act or practice, a civil action may be brought under subsection (a): *Provided*, That the court may refer the matter to the Community Relations Service established by title X of this Act for as long as the court believes there is a reasonable possibility of obtaining voluntary compliance, but for not more than sixty days: *Provided further*, That upon expiration of such sixty-day period, the court may extend such period for an additional period, not to exceed a cumulative total of one hundred and twenty days, if it believes there then exists a reasonable possibility of securing voluntary compliance.

SEC. 205. The Service is authorized to make a full investigation of any complaint referred to it by the court under section 204 (d) and may hold such hearings with respect thereto as may be necessary. The Service shall conduct any hearings with respect to any such complaint in executive session, and shall not release any testimony given therein except by agreement of all parties involved

in the complaint with the permission of the court, and the Service shall endeavor to bring about a voluntary settlement between the parties.

SEC. 206. (a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this title, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

(b) In any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of the copy of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so

designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

SEC. 207. (a) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this title and shall exercise the same without regard to whether the aggrieved party shall have exhausted any administrative or other remedies that may be provided by law.

(b) The remedies provided in this title shall be the exclusive means of enforcing the rights based on this title, but nothing in this title shall preclude any individual or any State or local agency from asserting any right based on any other Federal or State law not inconsistent with this title, including any statute or ordinance requiring nondiscrimination in public establishments or accommodations, or from pursuing any remedy, civil or criminal, which may be available for the vindication or enforcement of such right.

SUPREME COURT OF THE UNITED STATES

Nos. 515 and 543.—October Term, 1964.

Heart of Atlanta Motel, Inc., Appellant, v. United States et al.	On Appeal From the United States District Court for the Northern District of Georgia.
Nicholas deB. Katzenbach, Acting Attorney General, et al., Appellants, v. Ollie McClung, Sr., and Ollie McClung, Jr.	On Appeal From the United States District Court for the Northern District of Alabama.

[December 14, 1964.]

Mr. Justice Black, concurring.

In the first of these two cases the Heart of Atlanta Motel, a large motel in downtown Atlanta, Georgia, appeals from an order of a three-judge United States District Court for the Northern District of Georgia enjoining it from continuing to violate Title II of the Civil Rights Act of 1964[1] by refusing to accept Negroes as lodgers solely because of their race. In the second case the Acting Attorney General of the United States and a United States Attorney appeal from a judgment of a three-judge United States District Court for the Northern District of Alabama holding that Title II cannot constitutionally be applied to Ollie's Barbecue, a restaurant in Birmingham, Alabama, which serves few if any interstate travelers but which buys a substantial quantity of food which has moved in interstate commerce. It is undisputed that

[1] 78 Stat. 241, — U. S. C. §— (Supp. — 1964); Title II is found at 78 Stat. ———, — U. S. C. §§——— (Supp. — 1964).

both establishments had and intended to continue a policy against serving Negroes. Both claimed that Congress had exceeded its constitutional powers in attempting to compel them to use their privately owned businesses to serve customers whom they did not want to serve.

The most immediately relevant parts of Title II of the Act, which, if valid, subject this motel and restaurant to its requirements are set out below.[2] The language of

[2] Section 201 of the Act, 78 Stat. 241, 243, — U. S. C. § — (Supp. — 1964) provides in part:

"(a) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

"(b) Each of the following establishments which serves the public is a place of public accommodation within the meaning of this title if its operations affect commerce, or if discrimination or segregation by it is supported by State action:

"(1) any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;

"(2) any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment; or any gasoline station;

. . . . . .

"(c) The operations of an establishment affect commerce within the meaning of this title if (1) it is one of the establishments described in paragraph (1) of subsection (b); (2) in the case of an establishment described in paragraph (2) of subsection (b), it serves or offers to serve interstate travelers or a substantial portion of the food which it serves, or gasoline or other products which it sells, has moved in commerce; . . . . For purposes of this section, 'commerce' means travel, trade, traffic, commerce, transportation, or communication among the several States . . . ."

that Title shows that Congress in passing it intended to exercise—at least in part—power granted in the Constitution by Art. I, § 8, "To regulate Commerce . . . among the several States . . . ." Thus § 201 (b) of Title II by its terms is limited in application to a motel or restaurant of which the "operations affect [interstate] commerce, or if discrimination or segregation by it is supported by State action."[3] The "State action" provision need not concern us here since there is no contention that Georgia or Alabama has at this time given any support whatever to these establishments' racially discriminatory practices. The basic constitutional question decided by the courts below and which this Court must now decide is whether Congress exceeded its powers to regulate interstate commerce and pass all laws necessary and proper to such regulation in subjecting either this motel or this restaurant to Title II's commands that applicants for food and lodging be served without regard to their color. And if the regulation is otherwise within the congressional commerce power, the motel and the restaurant proprietors further contend that it would be a denial of due process under the Fifth Amendment to compel them to serve Negroes against their will.[4] I agree that all these constitutional contentions must be rejected.

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[3] This last definitional clause of § 201 (b) together with § 202 show a congressional purpose also to rely in part on § 1 of the Fourteenth Amendment, which forbids any State to deny due process or equal protection of the laws. There is no contention in these cases that Congress relied on the fifth section of the Fourteenth Amendment granting it "power to enforce, by appropriate legislation, the provisions of" the Amendment.

[4] The motel also argues that the law violates the Thirteenth Amendment's prohibition of slavery or involuntary servitude and takes private property for public use without just compensation, in violation of the Fifth Amendment.

I.

It requires no novel or strained interpretation of the Commerce Clause to sustain Title II as applied in either of these cases. At least since *Gibbons* v. *Ogden*, 9 Wheat. 1, decided in 1824 in an opinion by Chief Justice John Marshall, it has been uniformly accepted that the power of Congress to regulate commerce among the States is plenary, "complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution." 9 Wheat., at 196. Nor is "Commerce" as used in the Commerce Clause to be limited to a narrow, technical concept. It includes not only, as Congress has enumerated in the Act, "travel, trade, traffic, commerce, transportation, or communication," but also all other unitary transactions and activities that take place in more States than one. That some parts or segments of such unitary transactions may take place only in one State cannot, of course, take from Congress its plenary power to regulate them in the national interest.[5] The facilities and instrumentalities used to carry on this commerce, such as railroads, truck lines, ships, rivers, and even highways are also subject to congressional regulation, so far as is necessary to keep interstate traffic upon fair and equal terms. *The Daniel Ball*, 10 Wall. 557.

Furthermore, it has long been held that the Necessary and Proper Clause, Art. 1, § 8, cl. 18, adds to the commerce power of Congress the power to regulate local instrumentalities operating within a single state if their activities burden the flow of commerce among the States. Thus in the *Shreveport Case, Houston, E. & W. T. R. Co.* v. *United States*, 234 U. S. 342, 353–354, this Court recog-

[5] Compare *United States* v. *South-Eastern Underwriters Assn.*, 322 U. S. 533, 546–547; *Board of Trade* v. *Olsen*, 262 U. S. 1, 33–36; *Swift & Co.* v. *United States*, 196 U. S. 375, 398–399.

nized that Congress could not fully carry out its responsibility to protect interstate commerce were its constitutional power to regulate that commerce to be strictly limited to prescribing the rules for controlling the things actually moving in such commerce or the contracts, transactions, and other activities, immediately concerning them. Regulation of purely intrastate railroad rates is primarily a local problem for state rather than national control. But the *Shreveport Case* sustained the power of Congress under the Commerce Clause and the Necessary and Proper Clause to control purely intrastate rates, even though reasonable, where the effect of such rates was found to impose a discrimination injurious to interstate commerce. This holding that Congress had power under these clauses, not merely to enact laws governing interstate activities and transactions, but also to regulate even purely local activities and transactions where necessary to foster and protect interstate commerce, was amply supported by Mr. Justice (later Mr. Chief Justice) Hughes' reliance upon many prior holdings of this Court extending back to *Gibbons* v. *Ogden*, *supra*.[6] And since the *Shreveport Case* this Court has steadfastly followed, and indeed has emphasized time and time again, that Congress has ample power to protect interstate commerce from activities adversely and injuriously affecting it, which but for this adverse effect on interstate commerce would be beyond the power of Congress to regulate.[7]

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[6] "The genius and character of the whole government seem to be that its action is to be applied to all the external concerns of the nation, and to those internal concerns which affect the States generally; but not to those which are completely within a particular State, *which do not affect other States, and with which it is not necessary to interfere for the purpose of executing some of the general powers of the government.*" *Gibbons* v. *Ogden*, *supra*, 9 Wheat., at 195. (Emphasis supplied.)

[7] See, *e. g.*, *Labor Board* v. *Reliance Fuel Oil Corp.*, 371 U. S. 224; *Lorain Journal Co.* v. *United States*, 342 U. S. 143; *United States* v.

Congress in § 201 declared that the racially discriminatory "operations" of a motel of more than five rooms for rent or hire do adversely affect interstate commerce if it "provides lodging to transient guests . . ." and that restaurant "operations" affect such commerce if (1) "it serves or offers to serve interstate travelers" or (2) "a substantial portion of the food which it serves . . . has moved in [interstate] commerce." Congress thus described the nature and extent of operations which it wished to regulate, excluding some establishments from the Act either for reasons of policy or because it believed its powers to regulate and protect interstate commerce did not extend so far. There can be no doubt that the operations of both the motel and the restaurant here fall squarely within the measure Congress chose to adopt in the Act and deemed adequate to show a constitutionally prohibitable adverse effect on commerce. The choice of policy is of course within the exclusive power of Congress; but whether particular operations affect interstate commerce sufficiently to come under the constitutional power of Congress to regulate them is ultimately a judicial rather than a legislative question, and can be settled finally only by this Court. I agree that as applied to this motel and this restaurant the Act is a valid exercise of congressional power, in the case of the motel because the record amply demonstrates that its practice of discrimination tended directly to interfere with interstate travel, and in the case of the restaurant because Congress had

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Women's Sportswear Manufacturers Assn., 336 U. S. 460; *United States* v. *Sullivan*, 332 U. S. 689; *Wickard* v. *Filburn*, 317 U. S. 111; *United States* v. *Wrightwood Dairy Co.*, 315 U. S. 110; *United States* v. *Darby*, 312 U. S. 100; *Labor Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1; *Kentucky Whip & Collar Co.* v. *Illinois Central R. Co.*, 299 U. S. 334. See also *Southern R. Co.* v. *United States*, 222 U. S. 20.

ample basis for concluding that a widespread practice of racial discrimination by restaurants buying as substantial a quantity of goods shipped from other States as this restaurant buys could distort or impede interstate trade.

The Heart of Atlanta Motel is a large 216-room establishment strategically located in relation to Atlanta and interstate travelers. It advertises extensively by signs along interstate highways and in various advertising media. As a result of these circumstances approximately 75% of the motel guests are transient interstate travelers. It is thus an important facility for use by interstate travelers who travel on highways, since travelers in their own cars must find lodging places to make their journeys comfortably and safely.

The restaurant is located in a residential and industrial section of Birmingham, 11 blocks from the nearest interstate highway. Almost all, if not all, its patrons are local people rather than transients. It has seats for about 200 customers and annual gross sales of about $350,000. Most of its sales are of barbecued meat sandwiches and pies. Consequently, the main commodity it purchases is meat, of which during the 12 months before the District Court hearing it bought $69,683 worth (representing 46% of its total expenditures for supplies), which had been shipped into Alabama from outside the State. Plainly, 46% of the goods it sells is a "substantial" portion and amount. Congress concluded that restaurants which purchase a substantial quantity of goods from other States might well burden and disrupt the flow of interstate commerce if allowed to practice racial discrimination, because of the stifling and distorting effect that such discrimination on a wide scale might well have on the sale of goods shipped across state lines. Certainly this belief would not be irrational even had there not been

a large body of evidence before the Congress to show the probability of this adverse effect.[8]

The foregoing facts are more than enough, in my judgment, to show that Congress acting within its discretion and judgment has power under the Commerce Clause and the Necessary and Proper Clause to bar racial discrimination in the Heart of Atlanta Motel and Ollie's Barbecue. I recognize that every remote, possible, speculative effect on commerce should not be accepted as an adequate constitutional ground to uproot and throw into the discard all our traditional distinctions between what is purely local, and therefore controlled by state laws, and what affects the national interest and is therefore subject to control by federal laws. I recognize too that some isolated and remote lunch room which sells only to local people and buys almost all its supplies in the locality may possibly be beyond the reach of the power of Congress to regulate commerce, just as such an establishment is not covered by the present Act. But in deciding the constitutional power of Congress in cases like the two before us we do not consider the effect on interstate commerce of only one isolated, individual, local event, without regard to the fact that this single local event when added to many others of a similar nature may impose a burden on interstate commerce by reducing its volume or distorting its flow. *Labor Board* v. *Reliance Fuel Oil Corp.*, 371 U. S. 224; *Wickard* v. *Filburn*, *supra*, 317 U. S., at 127–128; *United States* v. *Darby*, *supra*, 312 U. S., at 123; *Labor Board* v. *Fainblatt*, 306 U. S. 601, 608–609; cf. *Hotel Employees Local No. 255* v. *Leedom*, 358 U. S. 99. There are

[8] See, *e. g.*, Hearings Before the Committee on Commerce on S. 1732, U. S. Senate, 88th Cong., 1st Sess., Part 1, Ser. 26, pp. 18–19 (Attorney General Kennedy), 623–630 (Secretary of Labor Wirtz); Part 2, Ser. 26, pp. 695–700 (Under Secretary of Commerce Roosevelt).

approximately 20,000,000 Negroes in our country.[9] Many of them are able to, and do, travel among the States in automobiles. Certainly it would seriously discourage such travel by them if, as evidence before the Congress indicated has been true in the past,[10] they should in the future continue to be unable to find a decent place along their way in which to lodge or eat. Cf. *Boynton* v. *Virginia*, 364 U. S. 454. And the flow of interstate commerce may be impeded or distorted substantially if local sellers of interstate food are permitted to exclude all Negro consumers. Measuring, as this Court has so often held is required, by the aggregate effect of a great number of such acts of discrimination, I am of the opinion that Congress has constitutional power under the Commerce and Necessary and Proper Clauses to protect interstate commerce from the injuries bound to befall it from these discriminatory practices.

Long ago this Court, again speaking through Mr. Chief Justice Marshall, said:

> "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." *M'Culloch* v. *Maryland*, 4 Wheat. 316, 412.

By this standard Congress acted within its power here. In view of the Commerce Clause it is not possible to deny that the aim of protecting interstate commerce from undue burdens is a legitimate end. In view of the Thirteenth, Fourteenth and Fifteenth Amendments, it is not possible to deny that the aim of protecting Negroes from

[9] Bureau of the Census, 1964 Statistical Abstract of the United States, 25 (18,872,000 Negroes by 1960 census).

[10] See, *e. g.*, Sen. Rep. No. 872, 88th Cong., 2d Sess., 15–18.

discrimination is also a legitimate end.[11] The means adopted to achieve these ends are also appropriate, plainly adopted to achieve them and not prohibited by the Constitution but consistent with both its letter and spirit.

II.

The restaurant and motel proprietors argue also, however, that Congress violated the Due Process Clause of the Fifth Amendment by requiring that they serve Negroes if they serve others. This argument comes down to this: that the broad power of Congress to enact laws deemed necessary and proper to regulate and protect interstate commerce is practically nullified by the negative constitutional commands that no person shall be deprived of "life, liberty, or property, without due process of law" and that private property shall not be "taken" for public use without just compensation. In the past this Court has consistently held that regulation of the use of property by the Federal Government or by the States does not violate either the Fifth or the Fourteenth Amendments. See, *e. g.*, *Ferguson* v. *Skrupa*, 372 U. S. 726;

[11] We have specifically upheld the power of Congress to use the commerce power to end racial discrimination. *Boynton* v. *Virginia*, 364 U. S. 454; *Henderson* v. *United States*, 339 U. S. 816; *Mitchell* v. *United States*, 313 U. S. 80; cf. *Bailey* v. *Patterson*, 369 U. S. 31; *Morgan* v. *Virginia*, 328 U. S. 373. Compare cases in which the commerce power has been used to advance other ends not entirely commercial: *e. g.*, *United States* v. *Darby*, 312 U. S. 100 (Fair Labor Standards Act); *United States* v. *Miller*, 307 U. S. 174 (National Firearms Act); *Gooch* v. *United States*, 297 U. S. 124 (Federal Kidnaping Act); *Brooks* v. *United States*, 267 U. S. 432 (National Motor Vehicle Theft Act); *United States* v. *Simpson*, 252 U. S. 465 (Act forbidding shipment of liquor into a "dry" State); *Caminetti* v. *United States*, 242 U. S. 470 (White-Slave Traffic [Mann] Act); *Hoke* v. *United States*, 227 U. S. 308 (White-Slave Traffic [Mann] Act); *Hipolite Egg Co.* v. *United States*, 220 U. S. 45 (Pure Food and Drug Act); *Lottery Case*, 188 U. S. 321 (Act forbidding interstate shipment of lottery tickets).

District of Columbia v. *John R. Thompson Co.*, 346 U. S. 100; *Village of Euclid* v. *Ambler Realty Co.*, 272 U. S. 365; *Nebbia* v. *New York*, 291 U. S. 502. A regulation such as that found in Title II does not even come close to being a "taking" in the constitutional sense. Cf. *United States* v. *Central Eureka Mining Co.*, 357 U. S. 155. And a more or less vague clause like the requirement for due process, originally meaning "according to the law of the land" would be a highly inappropriate provision on which to rely to invalidate a "law of the land" enacted by Congress under a clearly granted power like that to regulate interstate commerce. Moreover, it would be highly ironical to use the guarantee of due process—a guarantee which plays so important a part in the Fourteenth Amendment, an amendment adopted with the predominant aim of protecting Negroes from discrimination—in order to strip Congress of power to protect Negroes from discrimination.[12]

III.

For the foregoing reasons I concur in holding that the anti-racial-discrimination provisions of Title II of the Civil Rights Act of 1964 are valid as applied to this motel and restaurant. I should add that nothing in the *Civil Rights Cases*, 109 U. S. 3, which invalidated the Civil Rights Act of 1875,[13] gives the slightest support to the argument that Congress is without power under the Commerce Clause to enact the present legislation, since in the *Civil Rights Cases* this Court expressly left undecided the validity of such antidiscrimination legislation if rested on the Commerce Clause. See 109 U. S., at 18–19; see also *Butts* v. *Merchants & Miners Transp. Co.*, 230 U. S. 126, 132. Nor does any view expressed in my dissenting

[12] The motel's argument that Title II violates the Thirteenth Amendment is so insubstantial that it requires no further discussion.

[13] 18 Stat. 335.

opinion in *Bell* v. *Maryland*, 378 U. S. 226, 318, in which MR. JUSTICE HARLAN and MR. JUSTICE WHITE joined, affect this conclusion in the slightest, for that opinion stated only that the Fourteenth Amendment in and of itself, without implementation by a law passed by Congress, does not bar racial discrimination in privately owned places of business in the absence of state action. The opinion did not discuss the power of Congress under the Commerce and Necessary and Proper Clauses or under section 5 of the Fourteenth Amendment to pass a law forbidding such discrimination. See 378 U. S., at 318, 326, 342–343 and n. 44. Because the Civil Rights Act of 1964 as applied here is wholly valid under the Commerce Clause and the Necessary and Proper Clause, there is no need to consider whether this Act is also constitutionally supportable under section 5 of the Fourteenth Amendment which grants Congress "power to enforce, by appropriate legislation, the provisions of this article."

SUPREME COURT OF THE UNITED STATES

Nos. 515 AND 543.—OCTOBER TERM, 1964.

Heart of Atlanta Motel, Inc., Appellant, v. United States et al.	On Appeal From the United States District Court for the Northern District of Georgia.
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Nicholas deB. Katzenbach, Acting Attorney General, et al., Appellants, v. Ollie McClung, Sr., and Ollie McClung, Jr.	On Appeal From the United States District Court for the Northern District of Alabama.
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[December 14, 1964.]

MR. JUSTICE DOUGLAS, concurring.

I.

Though I join the Court's opinion, I am somewhat reluctant here, as I was in *Edwards* v. *California*, 314 U. S. 160, 177, to rest solely on the Commerce Clause. My reluctance is not due to any conviction that Congress lacks power to regulate commerce in the interests of human rights. It is rather my belief that the right of people to be free of state action that discriminates against them because of race, like the "right to persons to move freely from State to State" (*Edwards* v. *California*, *supra*, at 177), "occupies a more protected position in our constitutional system than does the movement of cattle, fruit, steel and coal across state lines." *Ibid.* Moreover, when we come to the problem of abatement in *Hamm* v. *City of Rock Hill*, *post*, —, decided this day, the result reached by the Court is for me much more obvious as a protective measure under the Fourteenth Amendment than under the Commerce Clause. For the former deals with the constitutional status of the indi-

vidual not with the impact on commerce of local activities or vice versa.

Hence I would prefer to rest on the assertion of legislative power contained in § 5 of the Fourteenth Amendment which states: "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article"—a power which the Court concedes was exercised at least in part in this Act.

A decision based on the Fourteenth Amendment would have a more settling effect, making unnecessary litigation over whether a particular restaurant or inn is within the commerce definitions of the Act or whether a particular customer is an interstate traveler. Under my construction, the Act would apply to all customers in all the enumerated places of public accommodation. And that construction would put an end to all obstructionist strategies and finally close one door on a bitter chapter in American history.

My opinion last Term in *Bell* v. *Maryland*, 378 U. S. 226, 242, makes clear my position that the right to be free of discriminatory treatment (based on race) in places of public accommodation—whether intrastate or interstate—is a right guaranteed against state action by the Fourteenth Amendment and that state enforcement of the kind of trespass laws which Maryland had in that case was state action within the meaning of the Amendment.

II.

I think the Court is correct in concluding that the Act is not founded on the Commerce Clause to the exclusion of the Enforcement Clause of the Fourteenth Amendment.

In determining the reach of an exertion of legislative power, it is customary to read various granted powers together. See *Veazie Bank* v. *Fenno*, 75 U. S. 533, 548–549; *Edye* v. *Robertson*, 112 U. S. 580, 595–596; *United*

States v. *Gettysburg Electric R. Co.*, 160 U. S. 668, 683. As stated in *McCulloch* v. *Maryland*, 4 Wheat. 316, 421:

> We admit, as all must admit, that the powers of the government are limited, and that its limits are not to be transcended. But we think the sound construction of the constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.

The "means" used in the present Act are in my view "appropriate" and "plainly adapted" to the end of enforcing Fourteenth Amendment rights [1] as well as protecting interstate commerce.

Section 201 (a) declares in Fourteenth Amendment language the right of equal access:

> All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

The rights protected are clearly within the purview of our decisions under the Equal Protection Clause of the Fourteenth Amendment.[2]

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[1] For a synopsis of the legislative history see the Appendix to this opinion.

[2] See *Peterson* v. *City of Greenville*, 373 U. S. 244 (discrimination in restaurant); *Lombard* v. *Louisiana*, 373 U. S. 267 (discrimination

"State action"—the key to Fourteenth Amendment guarantees—is defined by § 201 (d) as follows:

> Discrimination or segregation by an establishment is supported by State action within the meaning of this title if such discrimination or segregation (1) is carried on under color of any law, statute, ordinance, or regulation; or (2) is carried on under color of any custom or usage required or *enforced by officials of the State* or political subdivision thereof; or (3) is required by action of the State or political subdivision thereof. [Italics added.]

That definition is within our decision of *Shelley* v. *Kraemer*, 334 U. S. 1, for the "discrimination" in the present cases is "enforced by officials of the State," *i. e.*, by the state judiciary under the trespass laws.[3] As we wrote in *Shelley* v. *Kraemer*, *supra*, 19:

> We have no doubt that there has been state action in these cases in the full and complete sense of the phrase. The undisputed facts disclose that petitioners were willing purchasers of properties upon which they desired to establish homes. The owners of the properties were willing sellers; and contracts of sale were accordingly consummated. It is clear that but for the active intervention of the state courts, supported by the full panoply of state power, petitioners would have been free to occupy the properties in question without restraint.
>
> These are not cases, as has been suggested, in which the States have merely abstained from action,

in restaurant); *Burton* v. *Wilmington Parking Authority*, 365 U. S. 715 (discrimination in restaurant); *Watson* v. *City of Memphis*, 373 U. S. 526 (discrimination in city park); *Brown* v. *Board of Education*, 347 U. S. 483 (discrimination in public school system); *Nixon* v. *Herndon*, 273 U. S. 536 (discrimination in voting).

[3] The Georgia trespass law is found in Ga. Code Ann., § 26-3005 (1963 Supp.), and that of Alabama in Ala. Code, 1959, Tit. 14, § 426.

> leaving private individuals free to impose such discriminations as they see fit. Rather, these are cases in which the States have made available to such individuals the full coercive power of government to deny to petitioners, on the grounds of race or color, the enjoyment of property rights in premises which petitioners are willing and financially able to acquire and which the grantors are willing to sell. The difference between judicial enforcement and nonenforcement of the restrictive covenants is the difference to petitioners between being denied rights of property available to other members of the community and being accorded full enjoyment of those rights on an equal footing.

Section 202 declares the right of all persons to be free from certain kinds of state action at *any* public establishment—not just at the previously enumerated places of public accommodation:

> All persons shall be entitled to be free, at any establishment or place, from discrimination or segregation of any kind on the ground of race, color, religion, or national origin, if such discrimination or segregation is or purports to be required by any law, statute, ordinance, regulation, rule, or order of a State or any agency or political subdivision thereof.

Thus the essence of many of the guarantees embodied in the Act are those contained in the Fourteenth Amendment.

The Commerce Clause, to be sure, enters into some of the definitions of "place of public accommodation" in §§ 201 (b) and (c). Thus a "restaurant" is included, § 201 (b)(2), "if it serves or offers to serve interstate travelers or a substantial portion of the food which it serves . . . has moved in commerce." § 201 (c)(2). But any "motel" is included "which provides lodging to tran-

sient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence." §§ 201 (b)(1) and (c)(1). Providing lodging "to transient guests" is not strictly Commerce Clause talk; for the phrase aptly describes any guest—local or interstate.

Thus some of the definitions of "place of public accommodation" in § 201 (b) are in Commerce Clause language and some are not. Indeed § 201 (b) is explicitly bifurcated. An establishment "which serves the public is a place of public accommodation," says § 201 (b), under either of two conditions: *first*, "if its operations affect commerce," or *second*, "if discrimination or segregation by it is supported by State action."

The House Report emphasizes these dual bases on which the Act rests. (H. R. Rep. No. 914, 88th Cong., 1st Sess., p. 20)—a situation which a minority recognized was being attempted and which it opposed. *Id.*, pp. 98–101.

The Senate Committee laid emphasis on the Commerce Clause. S. Rep. No. 872, 88th Cong., 2d Sess., pp. 12–13. The use of the Commerce Clause, to surmount what was thought to be the obstacle of the *Civil Rights Cases*, 109 U. S. 3, is mentioned. *Ibid.* And the economic aspects of the problems of discrimination are heavily accented. *Id.*, pp. 17 *et seq.* But it is clear that the objectives of the Fourteenth Amendment were by no means ignored. As stated in the Senate Report:

> "Does the owner of private property devoted to use as a public establishment enjoy a property right to refuse to deal with any member of the public because of that member's race, religion, or national origin? As noted previously, the English common law answered this question in the negative. It reasoned that one who employed his private property

for purposes of commercial gain by offering goods or services to the public must stick to his bargain. It is to be remembered that the right of the private property owner to serve or sell to whom he pleased was never claimed when laws were enacted prohibiting the private property owner from dealing with persons of a particular race. Nor were such laws ever struck down as an infringement upon this supposed right of the property owner.

But there are stronger and more persuasive reasons for not allowing concepts of private property to defeat public accommodations legislation. The institution of private property exists for the purpose of enhancing the individual freedom and liberty of human beings. This institution assures that the individual need not be at the mercy of others, including government, in order to earn a livelihood and prosper from his individual efforts. Private property provides the individual with something of value that will serve him well in obtaining what he desires or requires in his daily life.

Is this time honored means to freedom and liberty now to be twisted so as to defeat individual freedom and liberty? Certainly denial of a right to discriminate or segregate by race or religion would not weaken the attributes of private property that make it an effective means of obtaining individual freedom. In fact, in order to assure that the intitution of private property serves the end of individual freedom and liberty it has been restricted in many instances. The most striking example of this is the abolition of slavery. Slaves were treated as items of private property, yet surely no man dedicated to the cause of individual freedom could contend that individual freedom and liberty suffered by emancipation of the slaves.

> There is not any question that ordinary zoning laws place far greater restrictions upon the rights of private property owners than would public accommodations legislation. Zoning laws tell the owner of private property to what type of business his property may be devoted, what structures he may erect upon that property, and even whether he may devote his private property to any business purpose whatsoever. Such laws and regulations restricting private property are necessary so that human beings may develop their communities in a reasonable and peaceful manner. Surely the presence of such restrictions does not detract from the role of private property in securing individual liberty and freedom.
>
> Nor can it be reasonably argued that racial or religious discrimination is a vital factor in the ability of private property to constitute an effective vehicle for assuring personal freedom. The pledge of this Nation is to secure freedom for every individual; that pledge will be furthered by elimination of such practices. [*Id.*, pp. 22–23.]

Thus while I agree with the Court that Congress in fashioning the present Act used the Commerce Clause to regulate racial segregation, it also used (and properly so) some of its power under § 5 of the Fourteenth Amendment.

I repeat what I said earlier, that our decision should be based on the Fourteenth Amendment, thereby putting an end to all obstructionist strategies and allowing every person—whatever his race, creed, or color—to patronize all places of public accommodation without discrimination whether he travels interstate or intrastate.

APPENDIX.

(1) *The Administration Bill* (as introduced in the House by Congressman Celler, it was H. R. 7152).

Unlike the Act as it finally became law, this bill (a) contained findings (pp. 10–13) which described discrimination in places of public accommodation and in findings (h) and (i) connected this discrimination to state action and invoked Fourteenth Amendment powers to deal with the problem; and (b) the bill, in setting forth the public establishments which were covered, used only commerce-type language and did not contain anything like the present § 201 (d) and its link to § 201 (b)—the "or" clause in § 201 (b). Nor did the bill contain the present § 202.

In the hearings before the House Judiciary Subcommittee the Attorney General stated clearly and repeatedly that while the bill relied "primarily" on the Commerce Clause, it was also intended to rest on the Fourteenth Amendment. See Hearings before Subcommittee No. 5, House Judiciary Committee, 88th Cong., 1st Sess., 1375–1376, 1388, 1396, 1410, 1417–1419.

(2) *The Subcommittee Bill* (as reported to the full House Judiciary Committee).

The Attorney General testified against portions of this bill. He reiterated that the administration bill rested on the Fourteenth Amendment as well as on the Commerce Clause: see Hearings, House Judiciary Committee on H. R. 7152, as amended, Subcommittee No. 5, 88th Cong., 1st Sess., 2693, 2700, 2764. But this bill added for the first time a provision similar to the present § 201 (d)—only much broader. See *id.*, at 2656, first full paragraph. (Apparently this addition was in response to the urgings of those who wanted to broaden the bill and who failed to comprehend that the administration

bill already rested, despite its commerce language, on the Fourteenth Amendment.) The Attorney General feared that the new provision went too far. Further, the new provision, unlike the present § 201 (d) but like the present § 202, did not limit coverage to those establishments specifically defined as places of public accommodation; rather it referred to all businesses operating under state "authorization, permission, or license." See *id.*, at 2656 top. The Attorney General objected to this: Congress ought not to invoke the Fourteenth Amendment generally but rather ought to specify the establishments that would be covered. See *id.*, at 2656, 2675–2676, 2726. This the administration bill had done by covering only those establishments which had certain commercial characteristics.

Subsequently the Attorney General indicated that he would accept a portion of the subcommittee additions that ultimately became §§ 201 (d) and 202; but he made it clear that he did not understand that these additions removed the Fourteenth Amendment foundation which the administration had placed under its bill. He did not understand that these additions confined the Fourteenth Amendment foundation of the bill to the additions alone; the commerce language sections were still supported in the alternative by the Fourteenth Amendment. See especially *id.*, at 2764; compare p. 2727 with p. 2698. The Subcommittee said that it made these additions in order to insure that the Fourteenth Amendment was relied on. See *id.*, at 2763; also Subcommittee Hearings, *supra*, 1413–1421. And the Attorney General repeated at p. 2764 that he would agree to whatever language was necessary to make it clear that the bill relied on the Fourteenth Amendment as well as the Commerce Clause.

Therefore it seems clear that a dual motive was behind the addition of what ultimately became §§ 201 (d) and 202: (1) to expand the coverage of the Act; (2) to make it

clear that Congress was invoking its powers under the Fourteenth Amendment.

(3) *The Committee Bill* (as reported to the House). This bill contains the present §§ 201 (d) and 202, except that "state action" is given an even broader definition in § 201 (d) as then written than it has in the present § 201 (d).

The House Report has the following statement: "*Section 201 (d)* delineates the circumstances under which discrimination or segregation by an establishment is supported by State action within the meaning of title II." H. R. Rep. No. 914, 88th Cong., 1st Sess., 21. On p. 117 of the Report Representative Cramer says: "The 14th amendment approach to public accommodations [in the committee bill as contrasted with the administration bill] is not limited to the narrower definition of 'establishment' under the interstate commerce approach and covers broad State 'custom or usage' or where discrimination is 'fostered or encouraged' by State action (sec. 201 (d))." By implication the committee has merely broadened the coverage of the administration's bill by adding the explicit state action language; it has not thereby removed the Fourteenth Amendment foundation from the commerce language coverage.

Congressman Celler introduced into the Congressional Record a series of memoranda on the constitutionality of the various titles of the bill; at pp. 1462–1463* the Fourteenth Amendment is discussed; at p. 1463 it is suggested that the Thirteenth Amendment is to be regarded as "additional authority" for the legislation.

At p. 1837 Congressman Willis introduces an amendment to strike out "transient guests" and to replace these words with "interstate travelers." As reported, says Con-

*All citations are to the daily Records for January 31 to February 5, 1964, not to the bound volumes, as they were unavailable when this Appendix was prepared.

gressman Willis, the bill boldly undertakes to regulate intrastate commerce, at least to this extent. *Ibid.* The purpose of the amendment is simply to relate "this bill to the powers of Congress." *Ibid.* Congressman Celler, the floor manager of the bill, will not accept the amendment, which introduces an element of uncertainty into the scope of the bill's coverage. At p. 1844 Congressman Lindsay makes remarks indicating that it is his understanding that the commerce language portions of § 201 rest only on the Commerce Clause, while the Fourteenth Amendment is invoked to support only § 201 (d).

But at p. 1846 Congressman MacGregor, a member of the Judiciary Subcommittee, states, in response to Congressman Willis's challenge to the constitutionality of the "transient guests" coverage, that: "When the gentleman from Louisiana seeks in subparagraph (1) on page 43 [§ 201 (b)(1)] to tightly circumscribe the number of inns, hotels and motels to be covered under this legislation he does violence to the 1883 Supreme Court decision where it defines the authority of the Congress under the 14th amendment. . . . Mr. Chairman, in light of the 1883 Supreme Court decision cited by the gentleman from Louisiana, and in light of a score of subsequent decisions, it is precisely the legislative authority granted in the 14th amendment that we seek here to exercise."

At pp. 1879–1884 there is the discussion surrounding the passage of the Goodell amendment striking the word "encouraged" from § 201 (d)(2) of the bill as reported. Likewise in these pages there is the discussion concerning the Willis amendment to the Goodell amendment: this amendment eliminated the word "fostered." After the adoption of these amendments the custom or usage had to be "required or enforced" by the State—not merely "fostered or encouraged" in order to constitute "state action" within the meaning of the Act.

At p. 1880 Congressman Smith of Virginia offered an amendment as a substitute to the Goodell amendment that would have eliminated the "custom or usage" language altogether. Congressman Celler said in defense of the bill as reported: "[C]ustom or usage is not constituted merely by a practice in a neighborhood or by popular attitude in a particular community. It consists of a practice which, though not embodied in law, receives notice and sanction to the extent that it is enforced by the officialdom of the State or locality" (p. 1881). The Smith Amendment was rejected by the House (p. 1883).

It would seem that the action on this Smith substitute and the statement by Congressman Celler mean that a state's enforcement of the custom of segregation in places of public accommodation by the use of its trespass laws is a violation of § 201 (d)(2).

(4) *The House Bill.*

The House bill was placed directly on the Senate calendar and did not go to committee. The Dirksen-Mansfield substitute adopted by the Senate made only one change in §§ 201 and 202: it changed "a" to "the" in § 201 (d)(3). Senator Dirksen nowhere made any explicit references to the constitutional bases of Title II. Thus it is fair to assume that the Senate's understanding on this question was no different from the House's view. The Senate substitute was adopted without change by the House on July 2, 1964, and signed by the President on the same day.

SUPREME COURT OF THE UNITED STATES

Nos. 515 AND 543.—OCTOBER TERM, 1964.

Heart of Atlanta Motel, Inc., Appellant, v. United States et al. (515)	On Appeal From the United States District Court for the Northern District of Georgia.
Nicholas deB. Katzenbach, Acting Attorney General, et al., Appellants, v. Ollie McClung, Sr., and Ollie McClung, Jr. (543)	On Appeal From the United States District Court for the Northern District of Alabama.

[December 14, 1964.]

MR. JUSTICE GOLDBERG, concurring.

I join in the opinions and judgments of the Court, since I agree "that the action of the Congress in the adoption of the Act as applied here . . . is within the power granted it by the Commerce Clause of the Constitution, as interpreted by this Court for 140 years." *Heart of Atlanta Motel, Inc.* v. *United States*, at 20.

The primary purpose of the Civil Rights Act of 1964, however, as the Court recognizes, and as I would underscore, is the vindication of human dignity and not mere economics. The Senate Commerce Committee made this quite clear:

> The primary purpose of . . . [the Civil Rights Act], then, is to solve this problem, the deprivation of personal dignity that surely accompanies denials of equal access to public establishments. Discrimination is not simply dollars and cents, hamburgers and movies; it is the humiliation, frustration, and embarrassment that a person must surely feel when

> he is told that he is unacceptable as a member of the public because of his race or color. It is equally the inability to explain to a child that regardless of education, civility, courtesy, and morality he will be denied the right to enjoy equal treatment, even though he be a citizen of the United States and may well be called upon to lay down his life to assure this Nation continues. [S. Rep. No. 872, 88th Cong., 2d Sess., 16.]

Moreover, that this is the primary purpose of the Act is emphasized by the fact that while § 201 (c) speaks only in terms of establishments which "affect commerce," it is clear that Congress based this section not only on its power under the Commerce Clause but also on § 5 of the Fourteenth Amendment.* The cases cited in the Court's

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*Hearings in Congress as well as statements by administration spokesmen show that the original bill, presented by the administration, was so based even though it contained no clause which resembled § 201 (d)—the so-called "state action" provision—or which even mentioned "state action." See, *e. g.*, Hearings before Senate Committees on Commerce on S. 1732, 88th Cong., 1st Sess., 23, 27–28, 57, 74, 230, 247–248, 250, 252–253, 256, 259; Hearings before Senate Judiciary Committee on S. 1731, 88th Cong., 1st Sess., 151, 152, 186; Hearings before Subcommittee No. 5 of the House Committee on the Judiciary on H. R. 7152, 88th Cong., 1st Sess., 1396, 1410, 2693, 2699–2700; S. Rep. No. 872, 88th Cong., 1st Sess., 2. The later additions of "state action" language to § 201 (a) and § 201 (d) did not remove the dual Commerce Clause-Fourteenth Amendment support from the rest of the bill, for those who added this clause did not intend thereby to bifurcate its constitutional basis. This language and § 201 (d) were added, first, in order to make certain that the Act would cover all or almost all of the situations as to which this Court might hold that § 1 of the Fourteenth Amendment applied. Senator Hart stated that not to do so would "embarrass Congress because . . . the reach of the administration bill would be less inclusive than that Court-established right." Hearings before Senate Commerce Committee, *supra*, at 256. See also *id.*, at 259–262. Second, the sponsors of § 201 (d) were trying to make even clearer

opinions are conclusive that Congress could exercise its powers under the Commerce Clause to accomplish this purpose. As §§ 201 (b) and (c) are undoubtedly a valid exercise of the Commerce Clause power for the reasons stated in the opinion of the Court, the Court considers that it is unnecessary to consider whether it is additionally supportable by Congress' exertion of its power under § 5 of the Fourteenth Amendment.

In my concurring opinion in *Bell* v. *Maryland*, 378 U. S. 226, 317, however, I expressed my conviction that § 1 of the Fourteenth Amendment guarantees to all Americans the constitutional right "to be treated as equal members of the community with respect to public accommodations," and that "Congress [has] authority under § 5 of the Fourteenth Amendment, or under the Commerce Clause, Art. I, § 8, to implement the rights protected by § 1 of the Fourteenth Amendment. In the give-and-take of the legislative process, Congress can fashion a law drawing the guidelines necessary and appropriate to facilitate practical administration and to distinguish between genuinely public and private accommodations." The challenged Act is just such a law and, in my view, Congress clearly had authority both under § 5 of the Fourteenth Amendment and the Commerce Clause to enact the Civil Rights Act of 1964.

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the Fourteenth Amendment basis of Title II. See, *e. g.*, Hearings before Subcommittee No. 5 of the House Committee, *supra*, at 1413–1418; Hearings before the Senate Commerce Committee, *supra*, at 259–262. There is no indication that they thought the inclusion of § 201 (d) would remove the Fourteenth Amendment foundation of the rest of the title. Third, the history of the bill after provisions similar to § 201 (d) were added contains references to the dual foundation of all Title II provisions before us. See *id.*, at 1396, 1410, 2693, 2699–2700; Cong. Rec., Feb. 4, 1964, 1846–1848.